

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**





# 76-7478

## United States Court of Appeals

For the Second Circuit

Docket No. 76-7478

RANDALL BLACK, et al.,

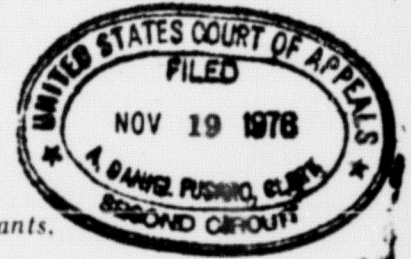
*Plaintiffs-Appellants.*

—against—

ABRAHAM BEAME, et al.,

*Defendants-Appellees.*

Appeal from the United States District Court for  
the Southern District of New York



### JOINT APPEAL

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A-1



1-14-76  
Clerk of the Court

75 CIV. 1927 DEFTS. POLLACK RAHALL, DECK ET AL. VS. ABRAHAM BEER, ET AL.

DATE	DESCRIPTION
08-11-76	Filed DEFTS. RAHALL's Proposed Order. Re: Defts. RAHALL's motion to set aside judgment of this Court and to set aside judgment of Federal District Court. (10/1/76)
08-30-76	(reced this date) Filed Affidavit of Prejudice check for plaintiffs.
08-30-76	(" " " " ) Filed Memorandum of points/authorities of Defts. CHRISTIAN and REICHERDT in support of motion to dismiss complaint.
08-30-76	Defts. ind. on motion of 2/10/76. See opinion dated and filed 8/30/76. Pollack, J. (m)
08-30-76	Filed Defts. Christian and Reichardt's affidavit/notice of motion to dismiss complaint and to stay discovery pending decision of within motion.
08-30-76	Filed Memo Ind. on motion of 8/30/76. See opinion dated 8/30/76. Pollack, J. (m)
08-30-76	Filed OPINION 450-6. Plaintiffs having asserted the doctrine of independent jurisdiction as the only basis for Court's subject matter jurisdiction over these statutory claims, this portion of complaint must be dismissed. Accordingly, complaint is dismissed in its entirety as to all defts. So ordered. Pollack, J. (m)
08-30-76	Filed Memo Ind. on document #17. See decision and opinion filed 8/30/76. Pollack, J. (m)
09-01-76	Filed JUDGMENT. Ordered that Defts. Abraham Beer, inf. et al have judgment against plaintiffs, dismissing complaint in its entirety as to all defts. Clerk (m)
09-17-76	Filed plaintiffs' Notice of Appeal from final judgment dismissing complaint in its entirety entered on 9/1/76 (will copy to S. Bernard Highland, David W. Norton, Louis J. Kozlowski and David Pollack, et al on 9/30/76)

1-14-76  
R. E. TARDT, Clerk

Deputy Clerk

#### INTRODUCTION

1. This is a civil rights action for declaratory and injunctive relief and damages pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§2201 and 2202 to protect and redress rights guaranteed by the First, Ninth and Fourteenth Amendments of the United States Constitution, Titles IV and XX of the federal Social Security Act, 42 U.S.C. §§601 et seq., 1397, and New York state law. Plaintiffs herein seek relief from the illegal and unconstitutional actions and inactions of defendants and their agents, each acting under color of state law, in failing to provide plaintiffs with the necessary and sufficient services to which they are entitled in order to keep their family intact.

#### JURISDICTION

2. This being an action to redress the deprivation under color of state law of rights, privileges and immunities guaranteed by the United States Constitution, jurisdiction is conferred on this court by 28 U.S.C. §§1343(3) and (4). Additionally, this action arises under the Constitution and laws of the United States and the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs. Therefore, jurisdiction is also conferred on this court by 28 U.S.C. §1331. Jurisdiction over the federal and state statutory causes of action is conferred under the doctrine of pendent jurisdiction.



PLAINTIFFS

3. Plaintiff Randall Black is a fifteen year old child who is a citizen of the United States and a resident of the state of New York. He is the son of Frances Black, and the brother of each of the other named plaintiffs herein. He appears by his attorneys and next friends, Marcia Robinson Lowry and Peter Bienstock. Since on or about March 3, 1972, he has resided at Mission of the Immaculate Virgin, Mount Loretto, Staten Island.

4. Plaintiff Greta Black is a fourteen year old child who is a citizen of the United States and a resident of the state of New York. She is the daughter of Frances Black, and the sister of each of the other named plaintiffs herein. She appears by her attorneys and next friends, Marcia Robinson Lowry and Peter Bienstock. Since on or about March 3, 1972, she has resided at Mission of the Immaculate Virgin, Mount Loretto, Staten Island.

5. Plaintiff Joseph Black is a thirteen year old child who is a citizen of the United States and a resident of the state of New York. He is the son of Frances Black, and the brother of each of the other named plaintiffs herein. He appears by his attorneys and next friends, Marcia Robinson Lowry and Peter Bienstock. Since on or about June 15, 1971, he has resided at Mission of the Immaculate Virgin, Mount Loretto, Staten Island.

6. Plaintiff Corrine Black is a twelve year old child who is a citizen of the United States and a resident of the state of New York. She is the daughter of Frances Black, and the sister of each of the other named plaintiffs herein. She appears by her attorneys and next friends,



Marcia Robinson Lowry and Peter Bienstock. Since on or about June 15, 1971, she has resided at Mission of the Immaculate Virgin, Mount Loretto, Staten Island.

7. Plaintiff Kim Black is a seventeen year old child who is a citizen of the United States and a resident of the state of New York. She is the daughter of Frances Black, and the sister of each of the other named plaintiffs herein. She appears by her attorneys and next friends, Marcia Robinson Lowry and Peter Bienstock. She resides with her mother at 826 Columbus Avenue, New York, New York.

8. Plaintiff Janice Black is a fifteen year old child who is a citizen of the United States and a resident of the state of New York. She is the daughter of Frances Black, and the sister of each of the other named plaintiffs herein. She appears by her attorneys and next friends, Marcia Robinson Lowry and Peter Bienstock. She resides with her mother at 826 Columbus Avenue, New York, New York.

9. Plaintiff Nathaniel Black is an eleven year old child who is citizen of the United States and a resident of the state of New York. He is the son of Frances Black, and the brother of each of the other named plaintiffs herein. He appears by his attorneys and next friends, Marcia Robinson Lowry and Peter Bienstock. He resides with his mother at 826 Columbus Avenue, New York, New York.

10. Plaintiff Ulysses Black is a nine year old child who is a citizen of the United States and a resident of the state of New York. He is the son of Frances Black

and the brother of each of the other named plaintiffs herein. He appears by his attorneys and next friends, Marcia Robinson Lowry and Peter Bienstock. He resides with his mother at 826 Columbus Avenue, New York, New York.

11. Plaintiff Geraldine Black is a four year old child who is a citizen of the United States and a resident of the state of New York. She is the daughter of Frances Black, and the sister of each of the other named plaintiffs herein. She appears by her attorneys and next friends, Marcia Robinson Lowry and Peter Bienstock. She resides with her mother at 826 Columbus Avenue, New York, New York.

#### DEFENDANTS

12. Defendant Abraham Beame is the duly elected mayor of the City of New York. As such he is responsible for the policies and practices of all New York City agencies and authorities, including the Human Resources Administration and New York City Housing Authority.

13. Defendant James Dumpson, an agent of defendant Beame, is the duly appointed administrator of the New York City Human Resources Administration and commissioner of the New York City Department of Social Services and as such is responsible for the administration of the New York City welfare district. New York Social Services Law §395 et seq. specifically mandates that the official in charge of the local public welfare district is responsible for the welfare of all children within his district who are in need of care and assistance.



14. Defendant Carol Parry, an agent of defendant Dumpson, is assistant administrator of Special Services for Children, an agency within the New York City Human Resources Administration and the Department of Social Services. Defendant Parry's program is directly responsible for providing protective and preventive services to New York City children in their own homes and for providing foster care services pursuant to New York Social Services Law §395 et seq. The Bureau of Child Welfare is within Special Services for Children, and is under defendant Parry's control and supervision.

15. Defendant Elizabeth Beine is an agent of defendants Dumpson and Parry. She is director of the Bureau of Child Welfare, a division within Special Services for Children.

16. Defendant Adolin Dall is the director of the Division of Inter-Agency Relationships of the Bureau of Child Welfare within Special Services for Children. Her division is responsible for supervising the treatment provided by voluntary child-care agencies to individual children who are the responsibility of defendants Dumpson and Parry. In addition, her division is responsible for providing annual reauthorizations to voluntary child-care agencies for their continued care of individual children in appropriate circumstances.

17. Defendant(s) Jane or John Doe is (or are) the employee(s) of the Bureau of Child Welfare, agent(s) of defendants Dumpson and Parry, with responsibility for recommending and authorizing foster care placement for plaintiffs.

Randall, Greta, Joseph and Corrine Black in or about January, 1971, without first authorizing the provision of any services to pr such placement, and with authority to . . . recom- mend and authorize services for plaintiffs Kim, Janice, Nathaniel, Ulysses and Geraldine Black in order to prevent their foster care placement.

18. Defendant(s) Jane or John Foe is (or are) the casework supervisor(s) for the Division of Inter-Agency Relationships with specific responsibility for supervising and approving actions taken by the caseworker who is responsible for the services being provided plaintiffs Randall, Greta, Joseph and Corrine Black while they are in foster care, including services to enable these plaintiffs to return home.

19. Defendant(s) Jane or John Goe is (or are) the caseworker(s) within the Division of Inter-Agency Relationships with specific responsibility for overseeing and approving the services being provided to plaintiffs Randall, Greta, Joseph and Corrine Black while they are in foster care, including services to enable these plaintiffs to return home.

20. Defendant Joseph Farrell is the director of the Amsterdam Center of the New York City Department of Social Services, and an agent of defendant Dumpson. He is responsible for the administration of the program which provides public assistance payments and related services to those who live in the geographic area which includes the residence of plaintiffs and their family. As such, he has direct responsibility for recommending, authorizing and providing public assistance payments and/or related services to the family of Frances Black, including plaintiffs Randall, Greta, Joseph, Corrine,



Kim, Janice, Nathaniel, Ulysses and Geraldine Black.

21. Defendant Joseph J. Christian is the chairman of the board of the New York City Housing Authority, duly appointed by defendant Beame, with responsibility for providing public housing services to those in need of such services in a fair and reasonable manner in accordance with law.

22. Defendant John J. Reichardt, an agent of defendant Christian, is the housing manager of the Douglass Houses, the New York City Housing Authority project which includes the buildings at 870 and 826 Columbus Avenue, New York City, in which plaintiffs and their family have resided.

23. Defendant Bernard Shapiro is the duly appointed Executive Director of the New York State Board of Social Welfare, which promulgates and administers regulations with regard to the provision of services to children in the state of New York and supervises and inspects authorized child-care agencies providing services to children in the state of New York.

24. Defendant Stephen Berger is the duly appointed Commissioner of the New York State Department of Social Services, which is responsible for the development, provision and partial funding of public welfare services for the state of New York, including services for children.

25. Defendant Monsignor Edmund F. Fogarty is the administrator of the Mission of the Immaculate Virgin, an

authorized child-care agency located in New York City, which provides child-care services for New York City children as an integral part of the New York City child-care system, acting in conjunction with and under the supervision of Special Services for Children. The agency performs such services in accordance with a written contract between the agency and Special Services for Children. The agency receives a substantial majority of its funding from the city, state and federal governments and all actions and inactions taken and not taken by the agency's administrator and employees alleged in this complaint were and are done under color of state law, custom and practice.

26. Defendant(s) Jane or John Hoe is (or are) the casework supervisor(s) for the Mission of the Immaculate Virgin with the specific responsibility for supervising and approving actions taken by the Mission of the Immaculate Virgin caseworker responsible for the services provided to plaintiffs Randall, Greta, Joseph and Corrine Black, including services to enable these plaintiffs to return home. They are agents and employees of defendant Fogarty.

27. Defendant(s) Jane or John Joe is (or are) the caseworker(s) for Mission of the Immaculate Virgin with specific responsibility for determining what services would be appropriate for plaintiffs Randall, Greta, Joseph and Corrine Black, including services to enable these plaintiffs to return home, and insuring that they receive such services. They are agents and employees of defendant Fogarty.



FACTUAL ALLEGATIONS

28. Plaintiffs Randall, Greta, Joseph, Corrine, Kim, Janice, Nathaniel, Ulysses and Geraldine Black are all the children of Frances Black, a thirty-eight year old woman who receives Aid to Families with Dependent Children both for herself and to support her children.

29. Plaintiffs all have a deep and abiding affection for each other and for their mother, and a strong desire to live with each other and with their mother. Ms. Black loves her children and has a strong desire to care for them and have them live with her.

30. Ms. Black has, throughout plaintiffs' lifetimes, struggled to provide as best she could for her children and to keep her family intact, but has repeatedly been defeated in her attempts by the customs, patterns and practices of defendants and each of them.

31. Defendants Beame, Dumpson, Parry, Dall, Beine, Doe, Foe, Goe, Farrell, Fogarty, Hoo, Joe, Christian, Reichardt, Berger and Shapiro and their agents and predecessors in office have engaged in a custom, pattern and practice of unlawfully denying plaintiffs Randall, Greta, Joseph, Corrine, Kim, Janice, Nathaniel, Ulysses and Geraldine Black services in their home in order to keep plaintiffs together as a family.

32. Defendants Beame, Dumpson, Parry, Beine, Dall, Doe, Foe, Goe, Farrell, Fogarty, Hoo, Joe, Christian, Reichardt, Berger and Shapiro and their agents and predecessors in office have further engaged in a custom, pattern and

practice of unlawfully failing to provide the services necessary for plaintiffs Randall, Greta, Joseph and Corrine Black to leave the institution in which they reside and be reunited with their mother, sisters and brothers.

33. Defendants, Beame, Dumpson, Parry, Beine, Dall, Doe, Poe, Goe, Farrell, Fogarty, Hoo, Joe, Christian, Reichardt, Berger and Shapiro and their agents and predecessors in office have further engaged in a custom, pattern and practice of unlawfully denying and delaying welfare benefits and services to plaintiffs and to their mother, Frances Black, and of harassing, humiliating and intimidating Frances Black in her attempts to secure adequate public assistance and housing for plaintiffs.

34. The actions and inactions of defendants, and each of them, taken pursuant to the custom, pattern and practice referred to in paragraphs 31 through 33 above, have had the inevitable effect of diminishing Frances Black's ability and capacity to provide care for plaintiffs, thus depriving and placing in jeopardy plaintiffs' right to the continuous care, supervision, nurturance and support of their mother in a stable home environment.

35. In 1968, Frances Black lived with nine of her children, including plaintiffs Randall, Greta, Joseph, Corrine, Kim, Janice, Nathaniel and Ulysses Black in a rundown two-bedroom tenement apartment at 13 W. 103rd Street, in New York City.

36. Plaintiffs were then and are now known to



defendants Dumpson and Farrell and their agents and predecessors in office as beneficiaries of Aid to Families with Dependent Children. Pursuant to state law, New York Social Services Law §395 et seq., defendants Dumpson and Farrell and their agents and predecessors in office were and are responsible for the welfare of plaintiffs.

37. In 1969, Frances Black and plaintiff Ulysses Black, then three years old, were bitten by mice which infested their apartment at 13 W. 103rd Street.

38. Although reports and complaints about the conditions in which plaintiffs were living were made to them, defendants Dumpson and Farrell and their agents and predecessors in office and their agents still failed to act to protect plaintiffs and provide for their welfare. Frances Black and plaintiffs Randall, Greta, Joseph, Corrine, Kim, Janice, Nathaniel and Ulysses Black then participated in a public demonstration, seeking adequate housing for the family.

39. Subsequent to this demonstration, Frances Black and nine of her children, including plaintiffs Randall, Greta, Joseph, Corrine, Kim, Janice, Nathaniel and Ulysses Black, were finally moved to a three bedroom apartment in a public housing project at 870 Columbus Avenue, New York City. This apartment was clearly inadequate for plaintiffs' large family, and Frances Black was promised a six bedroom apartment in another housing project by defendants Christian and Reichardt and their agents and predecessors in office as soon as one became available. Despite Ms. Black's constant inquiries, this promise was never fulfilled.

40. In 1970, after almost two years in the three bedroom apartment, Frances Black and eleven of her children, including Randall, Greta, Joseph, Corrine, Kim, Janice, Nathaniel, Ulysses and Geraldine Black were moved into a four bedroom apartment in the same housing project at 826 Columbus Avenue, where the Black family remains to this date.

41. From 1968 through 1971, Frances Black repeatedly sought help from defendants Dumpson, Farrell, Parry, Christian and their agents and predecessors in office to keep her family together and to help plaintiffs cope with the stresses of inadequate housing, substandard living conditions, and Ms. Black's deteriorating health. During that time the only form of service plaintiffs and their mother received was a public assistance allowance.

42. In January, 1971, Frances Black, pregnant, concerned about her ability to care for all of her family in their inadequate housing and discouraged about the possibilities of ever receiving any help for her children beyond bare subsistence, decided to place plaintiffs Randall, Greta, Corrine and Joseph Black in foster care so that she could seek employment in the hope of some day obtaining a home for all of her children.

43. Defendants Dumpson and Parry and their agents and predecessors in office took plaintiffs Randall, Greta, Corrine and Joseph into foster care without making any efforts to offer or provide plaintiffs with any services in order to avoid such placement. Said defendants did so even though they knew or should have known that plaintiffs Randall, Greta, Corrine and Joseph Black desired to remain with the rest of their family and had a constitutional right to do so.

44. Subsequent to the time that plaintiffs Randall, Greta, Corrine and Joseph Black entered foster care



placement, defendants Dumpson, Parry and Fogarty and their agents and predecessors in office have done nothing to help plaintiffs maintain contact with or return to the rest of their family, and have frequently failed to supply the financial assistance necessary for said plaintiffs to visit with their family.

45. Since on or about June 15, 1971, plaintiffs Corrine and Joseph Black and since on or about March 3, 1972, plaintiffs Randall and Greta Black have resided in the Mission of the Immaculate Virgin, a large child-care institution housing approximately seven hundred children on Staten Island. Said plaintiffs have all expressed continuing and increasing depression because of their institutionalization and have repeatedly asked to be reunited with the rest of their family.

46. On or about June 26, 1973, during a review of their foster care status in the New York Family Court, Judge William Rigler directed that defendants Dumpson, Parry, and Fogarty and their agents and predecessors in office assist Frances Black to find suitable housing so that plaintiffs Randall, Greta, Corrine and Joseph Black could be returned to their home. Said defendants have failed to make any efforts to do so.

47. During the entire time that plaintiffs Randall, Greta, Joseph and Corrine Black have been in foster care placement, defendants Beame, Dumpson, Parry, Beine, Dall, Doe, Foe, Goe, Farrell, Christian, Reichardt, Berger and



Shapiro and their agents and predecessors in office have continued to engage in a custom, pattern and practice of harassing, humiliating and intimidating Frances Black in the administration of public assistance and housing benefits, subjecting her to unnecessary bureaucratic confusion and mishap. This custom, pattern and practice has created additional stress on Frances Black and has interfered with her ability to provide a home for plaintiffs Randall, Greta, Joseph, Corrine, Kim, Janice, Nathaniel, Ulysses and Geraldine Black.

48. Frances Black has repeatedly asked defendants Dumpson, Parry and Farrell and their agents and predecessors in office for assistance and supportive services to help keep plaintiffs Kim, Janice, Nathaniel, Ulysses and Geraldine Black with her, and to have plaintiffs Michael, Greta, Joseph and Corrine Black reunited with the rest of their family. These requests have been met with the suggestion that plaintiffs Kim, Janice, Nathaniel, Ulysses and Geraldine also be placed in foster care by their mother.

49. In or about March, 1971, Frances Black became employed on a full-time basis by New York Telephone Company.

50. From in or about 1971 through and including March, 1975, the actions and inactions of defendants such as those described in paragraphs 31-34, 44, 46-48, above made it impossible for Frances Black to remain regularly employed. The harassment, humiliation and intimidation described above caused deterioration of Frances Black's health which in turn



caused repeated absences from employment.

51. Further, the necessity of Ms. Black's appearing at the myriad of administrative appointments to respond to said harassment, humiliation and intimidation by the welfare and housing officials caused repeated absences from her employment. Frances Black's employment was terminated in or about March, 1975.

52. In October, 1975, Anne Wang, a caseworker employed by the Bureau of Child Welfare and an agent of defendants Dumpson and Parry visited the home of Frances Black. Instead of offering Ms. Black any services in order to keep her family together, or to reunite plaintiffs Randall, Greta, Joseph and Corrine Black with the rest of their family, Ms. Wang threatened to remove plaintiffs Kim, Janice, Nathaniel, Ulysses and Geraldine from their mother and to place them in foster care.

53. Plaintiffs Kim, Janice, Nathaniel, Ulysses and Geraldine do not want to go into foster care. They want to remain together and with their mother. Plaintiffs Randall, Greta, Joseph and Corrine Black want to leave foster care and be reunited with the rest of the family.

54. Plaintiffs Kim, Janice, Nathaniel, Ulysses and Geraldine Black have suffered and continue to suffer serious and irreparable harm as a result of defendants' custom, pattern and practice of continued harassment, humiliation and intimidation of their mother, Frances Black, thereby diminishing her capacity to care for them, and of denying the services necessary for them to remain together as a stable family.



55. At all times relevant to this complaint defendants Beame, Dumpson, Parry, Beine, Dall, Doe, Foe, Goe, Farrell, Christian, Reichardt, and their agents and predecessors in office knew or reasonably should have known: 1) that the plaintiffs Kim, Janice, Nathaniel, Ulysses and Geraldine Black desire to remain with their family, and 2) that said defendants have a statutory and constitutional responsibility to provide all plaintiffs with services which would enable them to remain together, if at all possible.

56. Plaintiffs Randall, Greta, Joseph and Corrine Black have suffered and continue to suffer serious and irreparable harm as a result of their unnecessary institutionalization by defendants and defendants' denial of their constitutional right to be in the care and nurturance of their family.

57. At all times relevant to this complaint, defendants Beame, Dumpson, Parry, Beine, Dall, Doe, Foe, Goe, Farrell, Christian, Reichardt, Fogarty, Hoe and Joe and their agents and predecessors in office knew or reasonably should have known: 1) that the plaintiffs Randall, Greta, Joseph and Corrine Black desired to remain with their family and now desire to return to them, 2) that their family, including each of the other plaintiffs, desired to have them remain and now desire to have them return and 3) that said defendants have a statutory and constitutional responsibility to provide all plaintiffs with services which would enable them to remain together, if at all possible.



#### CAUSES OF ACTION

58. The actions and inactions of all defendants, and each of them, as described herein:

1) deny all plaintiffs and each of them their constitutional right to child welfare services in a manner least restrictive of their life, liberty and property as guaranteed by the First, Ninth and Fourteenth Amendments to the United States Constitution;

2) deny all plaintiffs and each of them their constitutional right to the continuation of their relationship with their natural parent as guaranteed by the First, Ninth and Fourteenth Amendments to the United States Constitution;

3) deny all plaintiffs and each of them their constitutional right not to be deprived of life, liberty and property without due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution;

4) deny plaintiffs Randall, Greta, Joseph and Corrine Black their constitutional right not to be subjected to cruel and unusual punishment as guaranteed by the Eighth Amendment to the United States Constitution;

5) deny all plaintiffs and each of them their constitutional right to privacy and freedom of association in the maintenance of their family relationship, as guaranteed by the First, Ninth and Fourteenth Amendments to the United States Constitution;

6) deny all plaintiffs and each of them their federal statutory right, pursuant to Titles IV and XX of the Federal Social Security Act, to continuation of their relationship with their natural parent while receiving services;

7) deny all plaintiffs and each of them their state constitutional and statutory rights to child welfare services in a manner which will enable plaintiffs to live with each other and with their mother.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this court:

(a) Enter a declaratory judgment that the actions and inactions of defendants and each of them as set forth in this complaint violate plaintiffs' constitutional rights:

(1) to child welfare services in a manner least restrictive of plaintiffs' life, liberty and property;

(2) to the continuation of their relationship with their natural parent;

(3) not to be deprived of life, liberty and property without due process of law;

(4) to privacy and freedom of association in the maintenance of their family relationship;

(b) Enter a declaratory judgment that the actions and inactions of defendants and each of them as set forth in this complaint violate the constitutional rights of plaintiffs Randall, Greta, Joseph and Corrine Black not to be subjected to cruel and unusual punishment;

(c) Enter a declaratory judgment that the actions and inactions of defendants and each of them as set forth in this complaint violate plaintiffs' federal statutory rights, pursuant to Titles IV and XX of the federal Social Security Act, to the continuation of their relationship with their natural parent while receiving services.



(d) Enter a declaratory judgment that the actions and inactions of defendants and each of them violate plaintiffs' state constitutional and statutory rights to services to enable plaintiffs to live with each other and with their mother;

(e) Enter a preliminary and permanent injunction forbidding the defendants and each of them from continuing to deny plaintiffs necessary and sufficient services, including adequate housing which would enable plaintiffs to live with each other and with their mother, Frances Black;

(f) Enter a preliminary and permanent injunction forbidding the defendants and each of them from continuing to provide public assistance and housing to plaintiffs in a manner accompanied by harassment, humiliation, intimidation and delay as set forth in this complaint;

(g) Award to all of the plaintiffs and each of them compensatory and punitive damages against all defendants and each of them for defendants' knowing and willful violation of plaintiffs' constitutional and federal statutory rights as set forth in this complaint;

(h) Award to plaintiffs reasonable costs and expenses incurred in the prosecution of this action, including but not limited to reasonable attorneys' fees;

(i) Grant such other and further relief as this court deems just and proper.

Dated: New York, New York  
November 18, 1975

Respectfully submitted,  
*Marcia Robinson Lowry*  
Marcia Robinson Lowry  
Peter Binstock  
Children's Rights Project  
New York Civil Liberties Union  
84 Fifth Avenue  
New York, New York 10011  
(212) 924-7800

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- -x  
Randall Black, et al., :  
Plaintiffs, : 75 Civ. 5827 MP  
-against- : ORDER TO SHOW CAUSE FOR A  
Abraham Beame, et al., : PRELIMINARY INJUNCTION  
Defendants. : AND TEMPORARY RESTRAINING  
----- -x

Upon the complaint, the affidavits, and the  
memorandum of law annexed hereto, it is hereby

ORDERED that defendants Dumpson, Parry, Beine and Dell  
or their attorneys show cause at a Motion Term of this  
court in Room 579, United States Courthouse, Foley Square,  
New York, New York on November 20, 1975 at 2 15 o'clock  
in the afternoon or as soon thereafter as counsel can be  
heard why an order pursuant to Rule 65, Fed. R. Civ. P.,  
should not be entered preliminarily enjoining the aforesaid  
defendants from taking any steps to remove plaintiffs Kim,  
Janice, Nathaniel, Ulysses and Geraldine Black from the home  
of their mother, Frances Black, including the instituting of  
legal proceedings for such removal, without first providing  
services designed to obviate the alleged need for such removal  
and it is further

ORDERED that pending the hearing and determination  
of this motion, that the aforesaid defendants be temporarily  
restrained from taking any steps to remove plaintiffs Kim,  
Janice, Nathaniel, Ulysses and Geraldine Black from the home  
of their mother, Frances Black, including the instituting of  
legal proceedings for such removal, and it is further ]

ORDERED that personal service of a true copy of this  
order and supporting papers on defendants Dumpson, Parry,



Beine and Dall on or before November 20 , 1975 at 11:30  
o'clock in the Forenoon shall be due and sufficient  
service thereof, and it is further

~~[ORDERED that the posting of security be waived.]~~

S/ Milton Pollack  
United States District Judge

Dated: New York, New York  
November 20 , 1975

Issued at 11:20 P.M.

— — — — — X

[illegible]

) ss.:

PETER BIENSTOCK, being duly sworn, deposes and says:

1. I am an attorney and next friend for plaintiffs Randall (15 years old), Greta (14), Joseph (13), Corrine (12) Kim (17), Janice (15), Nathaniel (11), Ulysses (9) and Geraldine Black (4). I make this affidavit in support of the annexed motion of five of these plaintiffs, Kim, Janice, Nathaniel, Ulysses and Geraldine Black for a temporary restraining order and preliminary injunction, enjoining the removal of these plaintiffs from their home.

2. The five moving plaintiffs all reside with their mother, Frances Black, at 826 Columbus Avenue in New York City. They have each told me that they have a strong desire to continue to reside with their mother and with each other. Their mother has told me that she has a strong desire to continue to live with and care for each of the plaintiffs.

3. As set forth in the annexed complaint, the moving plaintiffs, as well as plaintiffs Randall, Greta, Joseph and Corrine Black who currently reside in a child-care institution on Staten Island, have been subjected to a series of unconstitutional and illegal practices and procedures by



the defendants. For the purposes of this motion, those practices and procedures can be generally characterized as failure to provide plaintiffs with child welfare services which they require and to which they are entitled to enable them to continue to live together and with their mother. Rather, the defendants have acted and failed to act in a manner calculated to and which has had the inevitable effect of separating plaintiffs from each other and from their mother. The moving plaintiffs bring on this motion so that the status quo with respect to their living arrangements can be maintained pending this court's determination of the constitutional and statutory issues raised in the complaint. This motion does not seek any relief for plaintiffs Randall, Greta, Joseph and Corrine Black, who do not now reside at home.

4. As set forth in the annexed affidavit of Frances Black, the moving plaintiffs are in imminent danger of being irreparably harmed by being removed from their home by defendants. For this reason, plaintiffs bring on this motion by order to show cause. Consistent with defendants' previous practices, there has been no discussion of alternative services which will obviate the alleged causes of such removal.

5. I have met with and talked to each of the plaintiffs and Frances Black, both in my office and at their apartment. The moving plaintiffs have lived with their mother all their lives and are not in jeopardy of suffering harm if this court enjoins the removal from their home.

6. As set forth in the annexed memorandum of law, plaintiffs satisfy each of the requirements for preliminary injunctive relief.

7. No prior application has been made for the relief requested by this motion.

8. On November 19, 1975, I telephoned the offices of the New York City Corporation Counsel, counsel to defendants sought, by this motion, to be enjoined. I informed Mr. Leonard Bernikow, the attorney in charge of general litigation, that the annexed complaint had been filed on November 18, 1975 and that the annexed order to show cause would be submitted to Judge Pollack on November 20, 1975 at 11:00 A.M.

WHEREFORE, I respectfully request that the temporary restraining order and preliminary injunction sought herein be entered.

*Peter Biersstock*  
PETER BIENSTOCK

Sworn to before me this  
11th day of November, 1975.

*Marcia Robinson Barry*  
NOTARY PUBLIC

MARCIA ROBINSON BARRY  
Notary Public, New York  
City  
Commission Expires 12-31-1978



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
Randall Black, et al., :  
 :  
 Plaintiffs, : 75 Civ. 5627 MP  
 :  
 -against- :  
 :  
 Abraham Beame, et al., : AFFIDAVIT  
 :  
 Defendants. :  
-----x

State of New York )  
 ) ss.:  
 County of New York )

FRANCES BLACK, being duly sworn, deposes and says:

1. I am the mother of Randall, Greta, Joseph, Corrine, Kim, Janice, Nathaniel, Ulysses and Geraldine Black, the plaintiffs in this action.

2. Presently, Kim, Janice, Nathaniel, Ulysses and Geraldine Black live with me. Each of them has expressed to me a strong desire to stay with each other and with me. I want them to do so, and I believe that they have a legal and constitutional right to do so.

3. I have cared for each of my children to the best of my abilities and I believe that each of them has love and respect for each other and for me which makes us a very close-knit family.

4. Since before 1969, I have constantly sought assistance from public welfare officials to enable my children and me to live together. I have been consistently frustrated in these efforts. Since 1969, when ten of us lived in a two-bedroom tenement apartment, I have consistently and repeatedly informed officials of the welfare department, Housing Authority and the Bureau of Child Welfare that our housing was inadequate to allow us to live together.

5. When my calls for help went unheeded, in 1971, as a last resort, I voluntarily placed four of my children, Randall, Greta, Joseph and Corrine, in foster care through the Bureau of Child Welfare so that I could accept full-time employment. At no time did the Bureau of Child Welfare suggest or offer alternative services to keep my family together. At that time, I felt that a full-time job would enable me to earn and save enough money to buy adequate housing facilities for my family. While I did not want to separate my children, I believed that such separation would be temporary until I could afford adequate housing to enable my family to be re-united. Shortly thereafter, I obtained a full-time job with the New York Telephone Company.

6. For almost five years, Randall, Greta, Joseph and Corrine have remained in foster care, for most of that time at an institution on Staten Island. Although visiting is difficult, and although the Bureau of Child Welfare has never provided adequate funds for visiting, my children are re-united from time to time on weekends. We remain a closely-knit family, although less so than previously.

7. Through contact with their brothers and sisters in foster care, Kim, Janice, Nathaniel, Ulysses and Geraldine have come to know and fear the trauma of separation from their family and of placement in foster care. They very much do not want to be separated from each other or from myself, and want their siblings in foster care to come home.

8. Since I placed my four children in foster care, neither the Bureau of Child Welfare nor any other public welfare agency has suggested or offered us any services, including suitable housing, designed to re-unite us, even when ordered to do so by a judge of the Family Court (complaint ¶ 46). On the contrary, our family has been harassed by the various welfare agencies in a manner which has caused my



health to deteriorate, has caused me to have excessive absences from my job with the New York Telephone Company, and has now put Kim, Janice, Nathaniel, Ulysses and Geraldine in imminent danger of being involuntarily put into foster care, and thus separated from me. [See complaint ¶¶ 50-52]

9. In March of this year, my employment was terminated by the telephone company essentially for excessive absences caused by illness and the need to take time off to respond to the harassment of the welfare and housing authorities.

10. About three weeks ago, my family was visited by Anne Wang, who identified herself as a caseworker with the Bureau of Child Welfare. I explained to her, as I have explained to many welfare employees before her, that my family wants very much to remain together, but that we need assistance from the public welfare agencies to do so. She informed me that the Bureau of Child Welfare could and would initiate proceedings to have Kim, Janice, Nathaniel, Ulysses and Geraldine involuntarily placed in foster care. I told her that neither the children nor I wanted that. At no time did Ms. Wang offer or suggest alternative services to keep my family together.

11. I believe that if this court does not enjoin them from doing so, the Bureau of Child Welfare will start proceedings to have Kim, Janice, Nathaniel, Ulysses and Geraldine involuntarily placed in foster care.

12. I have asked Marcia Robinson Lowry and Peter Bienstock to represent Randall, Greta, Joseph, Corrine, Kim, Janice, Nathaniel, Ulysses and Geraldine to vindicate their legal and constitutional rights. I fully understand that they will represent the interests of the children only.



*Frances E. Black*  
FRANCES BLACK

Sworn to before me this  
26th day of November, 1975.

*Marcia Johnson Lowry*  
NOTARY PUBLIC

MARCIA JOHNSON LOWRY  
Notary Public, State of New York  
No. 31 42278-3  
County of Westchester  
Commission Expires March 30, 1976



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
Randall Black, et al., :  
Plaintiffs, : 75 Civ. 5827 MP  
-against- :  
Abraham Beame, et al., : AFFIDAVIT  
Defendants. :  
-----x

State of New York )  
County of New York ) ss.:

KIM BLACK, being duly sworn, deposes and says:

1. I am seventeen years old and live with my mother and family at 826 Columbus Avenue in New York City.
2. I want very much to continue to live with my mother and family.
3. As long as I can remember, our housing situation has been bad. I know that my mother has done her best to provide for our entire family, but that the welfare and housing authorities have frustrated her efforts, and their actions have impaired her health.
4. My mother recently told me that a worker from the Bureau of Child Welfare had threatened to take all of us who are living with our mother away from her and put us into foster care. None of us wants that to happen, since we want to remain with our mother and each other and we know from our brothers and sisters in foster care what that is like.
5. I am a plaintiff in this lawsuit. I know and understand that this suit seeks to establish my rights, and those of my brothers and sisters, to live together as a family with our mother, and to receive services, including housing, sufficient to do that.

Kim Black  
KIM BLACK

Sworn to before me this

18th day of November, 1975.

Marie Blum Levy  
NOTARY PUBLIC

BY  
JES

1975



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- -x  
RANDALL BLACK, et al., :  
Plaintiffs, : 75 Civ. 5827 MP  
-against- :  
ABRAHAM BEARD, et al., : AFFIDAVIT  
Defendants. :  
----- -x

State of New York )  
County of New York ) ss.:

JANICE BLACK, being duly sworn, deposes and says:

1. I am fifteen years old and live with my mother and family at 826 Columbus Avenue in New York City.
2. I want very much to continue to live with my mother and family.
3. As long as I can remember, our housing situation has been bad. I know that my mother has done her best to provide for our entire family, but that the welfare and housing authorities have frustrated her efforts, and their actions have impaired her health.
4. My mother recently told me that a worker from the Bureau of Child Welfare had threatened to take all of us who are living with our mother away from her and put us into foster care. None of us wants that to happen, since we want to remain with our mother and each other and we know from our brothers and sisters in foster care what that is like.
5. I am a plaintiff in this lawsuit. I know and understand that this suit seeks to establish my rights, and those of my brothers and sisters, to live together as a family with our mother, and to receive services, including housing, sufficient to do that.

J. Janice Black  
JANICE BLACK

Sworn to before me this

18<sup>th</sup> day of November, 1975.

My. Robinson Long  
NOTARY PUBLIC

My Comm. Expires 12/31/77  
Notary Public, New York  
No. 3142763  
County of ...  
Commission Expires 12/31/77



THE COURT: This case is before the court on an application for preliminary injunction. The court finds as follows:

Frances Black is a mother of nine children, varying in ages from four to seventeen years; five reside with the mother at 826 Columbus Avenue in New York City. Four reside in a child care institution on Staten Island.

Mrs. Black has sought and obtained public welfare assistance since before 1969. In 1971 she voluntarily placed four of her children (now 15, 14, 13 and 12 years old respectively) in foster care through the Bureau of Child Welfare.

She then obtained full-time employment with the New York Telephone Company. This terminated in March, 1975. The children who now reside with Mrs. Black are aged respectively 17, 15, 11, 9 and 4 (apparently three girls and two boys).

Mrs. Black states that three weeks ago she told a caseworker, Ann Wang of the Bureau of Child Welfare, she needed assistance from public welfare agencies to have all five children live with her. She says that she allegedly was told in response thereto that the Bureau of Child Welfare would initiate proceedings to have the five children involuntarily placed in foster care.



AR 2

Mrs. Black said she did not want this nor did her children.

The nub of the present application seems to be included in paragraph 11 of Mrs. Black's affidavit:

"I believe if this court does not enjoin them from doing so, the Bureau of Child Welfare will start proceedings to have Kim, Frances, Nathaniel, Ulysses and Geraldine involuntarily placed in foster care."

Mrs. Black said she asked lawyers for plaintiffs to vindicate the legal and constitutional rights of the children and they in paragraph 52 of the complaint which they have submitted, recite as the nub of the presence of a substantial federal question, the exchange in October, 1975, between the Caseworker, Ann Wang and another person, the matters recited in the foregoing quotation.

While not dispositive in any sense, it is significant to note that the Family Court Act, Article 10 of the State Judiciary Law, effective March 1, 1970, was designed to establish procedures to help protect children from injury or mistreatment and to help safeguard their physical, mental and emotional well-being.

Further, that the law was designed to provide a due process of law for determining when the state, through its Family Court, might intervene against the wishes of a



parent on behalf of a child so that his or her needs are properly met.

The law grants exclusive jurisdiction over proceedings alleging the abuse or neglect of a child to the Family Court, under Article 10.

It is further provided that a petition may be filed in the Family Court in a proceeding in which facts sufficient to establish that a child is an abused or neglected child under that article are alleged. Such a proceeding may be originated by a child protective agency or a person acting on the court's direction.

It is further provided that a Family Court judge may order the child protective service of the appropriate department of social services or request any other appropriate child protective agency to conduct a child protective investigation as described by the Social Service Law and report its findings to the court, in order to determine whether a proceeding under the article should be initiated or in a proceedings that has been initiated.

The matter is then duly heard in the Family Court on notice to all concerned and a fact-finding hearing is held to determine whether the child is an abused or neglected child as defined by the article and the court is given the power to enter an order finding that a child is or is not

an abused or neglected child, which is required to state the grounds for any finding that is made.

It cannot reasonably be gainsaid that a threat to institute a legal proceeding in the Family Court to determine what shall constitute appropriate protection of the best interests of the child in question, when properly pursued, does not violate a civil right.

In this case we are confronted at the threshold with whether facts are asserted stating a substantial constitutional claim so as to afford jurisdiction under 28 United States Code, Section 1343 (3) if other conditions are met.

It is too clear for argument that where no factual allegation is set forth in a pleading showing that a state or one of its municipalities or agencies have terminated benefits without due process, it fails to set forth any claim of unconstitutionality as applied.

In the present case there has been neither a termination or reduction of benefits. Moreover, not only may it be seriously questioned whether the complaint presents facts raising a substantial federal question, but it may be that neither welfare nor housing nor the alleged freedom from harassment and intimidation is a constitutional right, for that matter, continuous care by a mother is not necessarily an unqualified privilege.



The court recalls no authority and none has been presented by counsel to indicate that the government is obligated to fund the welfare or housing of these plaintiffs. There has been no action taken by an authorized agency or threat of improper action which would be detrimental to any consitutional right of the plaintiffs. All elements of due process seems available herein to the plaintiffs.

Under these circumstances, the burden which the plaintiffs must satisfy to be entitled to the extraordinary relief requested, does not appear to have been met. That burden consists of showing that absent the protection of a preliminary injunction the plaintiffs will suffer immediate irreparable harm pending the final resolution of the suit; that they have at least a reasonable probability of success on the merits; that is, that the plaintiffs will likely establish the essential elements of the asserted claims; and that the grant of a preliminary injunction is so important to the plaintiffs as to out-balance any inconvenience to be suffered by the defendants under the terms of the provisional relief.

Plaintiffs have failed utterly to substantiate these requirements and the balance of equities does not tip decidedly in favor of the plaintiffs.

The cases seem to indicate that abstention is

A-39

1 AR 6

2 appropriately recognized where the case may be disposed of on  
3 questions of state law and where to leave to the state the  
4 administration of its own affairs will afford every aspect  
5 of appropriate due process.

6 Be that as it may, and the court does not  
necessarily rest on that doctrine, it appears beyond  
peradventure of doubt that the plaintiffs have failed to make  
out a case for a preliminary injunction and the motion is  
in all respects denied.

The foregoing shall constitute the findings of  
fact and conclusions of law required by the Rules of Federal  
Civil Procedure, Rule 52(a).

So ordered.



A-41

Index No. 5027 122

Nov 17 75

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RENDALL BLACK, etc., et al.,

Plaintiffs,

-against-

ABRAHAM BEAME, etc., et al.,

Defendants.

ORDER TO SHOW CAUSE FOR  
A PRELIMINARY INJUNCTION  
AND TEMPORARY RESTRAINING  
ORDER

Marcia Robinson Lowry  
Peter Bienstock  
Attorneys for Plaintiffs

Office and Post Office Address, Telephone

New York Civil Liberties Union  
81 Fifth Avenue  
New York, New York 10011  
(212) 924-7800

To

Attorney(s) for

Service of a copy of this within

is hereby required.

By

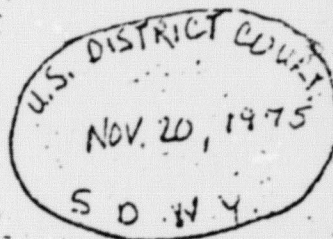
Attest

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Copy rec'd

11/20/75

C. Ackman  
attorney for defendants  
Dunston, Parry, Pall, Binni



75 Civ 5827 (MTP)

Preliminary Injunction  
Denied See findings of  
fact and conclusions  
Pursuant to Rule 52(a)  
Fed R Civ P on record of  
hearing this date.

So Ordered

November 20, 1975

Milton Pollack  
U.S. D.J.

A-41



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
RANDALL BLACK, et al.,

Plaintiffs,

-against-

ABRAHAM BEANE, et al.,

Defendants.  
-----x

NOTICE OF MOTION

75 Civ. 5027 (MP)

S I R S :

PLEASE TAKE NOTICE that on the complaint herein and the Memorandum of Law filed herewith, the undersigned on behalf of defendants Abraham Beane, James Dumpson, Carol Parry, Elizabeth Beine, Adelin Dall and Joseph Farrell ("City" defendants) will move this Court at the United States Courthouse, Foley Square, New York, New York, Room 905, before the Honorable Milton Pollack on February 20, 1976 at 2:00 p.m. pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure for an order dismissing this action with respect to "City" defendants, and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure for an order staying all discovery in this action pending resolution of the motion to dismiss the complaint.

Dated: New York, New York

February 9, 1976.

W. BERNARD RICHLAND,  
Corporation Counsel,  
Attorney for Defendants,  
Municipal Building,  
New York, New York 10007.

By: Camelia Achiam

CAMELIA ACHIAM

TO: Marcia R. Levy, Esq.  
Peter Bienenstock, Esq.  
Attorneys for Plaintiffs  
Children's Rights Project  
New York Civil Liberties Union  
84 Fifth Avenue  
New York, New York 10011



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x  
RANDALL BLACK, et al., :  
Plaintiffs, : 75 Civ. 5827 (MP)  
-against- :  
ABRAHAM BEAME, et al. : NOTICE OF MOTION  
Defendants. :  
- - - - - x

S I R S :

PLEASE TAKE NOTICE that defendant Monsignor Edmund F. Fogarty, individually and as Administrator of the Mission of the Immaculate Virgin will move pursuant to Rules 12(b)(1), (6) and (7) of the Federal Rules of Civil Procedure, upon the Affidavit of Alfred E. Schretter, Esq. sworn to February 10, 1976, and the papers submitted by the other defendants, in conjunction with similar motions made herein by the other defendants, at a stated motion part to be held at Room 905 of the United States Courthouse, Foley Square, New York, New York on the 20th day of February, 1975 at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order dismissing the complaint on the grounds of lack of jurisdiction over the subject matter, failure to state a claim upon which relief can be granted, and failure to join an indispensable party, and for such other and further relief as may be just.

PLEASE TAKE FURTHER NOTICE that said defendant will at the same time and place seek a stay of production



of documents requested by plaintiffs in a Request to Produce served on December 29, 1975 (which production has heretofore been stayed by stipulation of the parties and by this Court pursuant to the Federal Rules of Civil Procedure, until the within motion to dismiss has been decided by the Court.

Dated: New York, New York

February 10, 1976

DAVIS POLK & WARDWELL

By Richard E. Nolan *per*

A Member of the Firm

Attorneys for Defendant Monsignor  
Edmund F. Fogarty, individually  
and as Administrator of the  
Mission of the Immaculate  
Virgin

1 Chase Manhattan Plaza  
New York, New York 10005  
Tel. No. HA. 2-3400

TO:

Marcia Robinson Lowry,  
Peter Bienstock, Esq.  
Attorneys for Plaintiffs  
Children's Rights Project  
New York Civil Liberties Union  
84 Fifth Avenue  
New York, New York 10011  
Tel. No. 924-7800

J. Bernard Richland, Esq.  
Corporation Counsel  
By Carmela Ackman  
Assistant Corporation Counsel  
Attorneys for Defendants Beane,  
Dumpson, Parry, Beine and Dall  
Municipal Building  
New York, New York 10007  
Tel. No. 566-4501



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
RANDALL BLACK, et al., :  
 :  
 Plaintiffs, : 75 Civ. 5827 (MP)  
 :  
 -against- :  
 :  
 ABRAHAM BEAME, et al. : AFFIDAVIT  
 :  
 Defendants. :  
 ----- x

STATE OF NEW YORK )  
 : ss.:  
 COUNTY OF NEW YORK )

ALFRED E. SCHRETTER, being duly sworn says:

1. I am a member of the Bar of this Court and associated with the firm of Davis Polk & Wardwell, counsel for defendant Monsignor Edmund F. Fogarty in this action. I make this Affidavit in support of the motion of defendant Monsignor Edmund F. Fogarty to dismiss the complaint and for a protective order. I have personal knowledge of all of the facts stated herein by reason of my representation of Monsignor Fogarty and the Mission of the Immaculate Virgin, of which he is the Executive Director, in this litigation as well as other litigation against him brought by the attorneys of the New York Civil Liberties Union.

2. In this Affidavit, I will not duplicate the extensive briefs, affidavits and other papers already submitted by the New York City Corporation Counsel and the New York City Housing Authority. To spare the Court, we adopt these as a part of this defendant's papers.

3. Monsignor Fogarty and his agency, the Mission of the Immaculate Virgin, were requested by the City of



New York to care for four children of Mrs. Frances Black, plaintiff Randall Black and Greta Black since on or about March 3, 1972 and plaintiffs Joseph Black and Corrine Black since on or about June 15, 1971. Placement with this Agency through the City of New York was done voluntarily by Mrs. Black. There is no allegation that Monsignor Fogarty or his Agency have not been providing such care for these four children in an appropriate fashion. In other words, this is a pure purchase of services arrangement between the City of New York and Monsignor Fogarty's Agency which occurred upon the request of Mrs. Black.

WHEREFORE, it is respectfully requested that the Court dismiss the complaint as to this defendant and as to "Jane or John Doe" and "Jane or John Joe" who are otherwise unidentified.

Wm. E. Schell

Sworn to before me this  
10th day of February, 1976

Andrew J. Cusack

ANDREW J. CUSACK, Notary Public,  
State of New York, No. 41-0735365  
Qualified in Queens County  
Certificate filed in New York County  
Commission Expires March 30, 1977



UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RANDALL BLACK, GRETA BLACK, JOSEPH BLACK, :  
CORRINE BLACK, KIM BLACK, JANICE BLACK, :  
NATHANIEL BLACK, ULYSSES BLACK and :  
GERALDINE BLACK, by their attorneys and :  
next friends, MARCIA ROBINSON LOWRY and :  
PETER BILNSTOCK, :

Plaintiffs, :

-against- :

ABRAHAM BEAME, individually and as  
MAYOR OF THE CITY OF NEW YORK, etc. :  
et al., :

Defendants. :  
-----X

AFFIDAVIT

75 Civ. 5827  
MEP

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

AMY JUVILER, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of LOUIS J. IMPROVITA, Attorney General of the State of New York, attorney for defendants Shapiro and Berger. I make this affidavit in support of defendants' motion to dismiss the complaint heard in this Court on March 12, 1976. On the gracious consent of the Court the State defendants have been permitted to file this affidavit out of time.

2. The State defendants join in and support the learned arguments made by the other defendants and note that they apply with the same cogent force to the State defendants.



3. Furthermore, there are no factual allegations against any of the State defendants. The only substantive statement occurs in paragraph 47 of the complaint in which all the defendants are accused in general terms of "continu[ing] to engage in a custom, pattern and practice of harassing, humiliating and intimidating Frances Black in the administration of public assistance and housing benefits, subjecting her to unnecessary bureaucratic confusion and mishap." But these conclusory allegations are not based on any facts alleged against defendant Shapiro, Executive Director of the New York State Board of Social Welfare or defendant Berger, Commissioner of Social Services of the State of New York.

4. No State defendant has interfered with the living arrangements of the family. The mother of the plaintiffs voluntarily asked for foster care for her children. Custody of her children was not affirmatively sought by the defendants nor are they preventing their return to their home. No request for such a return has been made and the State defendants do not have the authority to act in this regard.

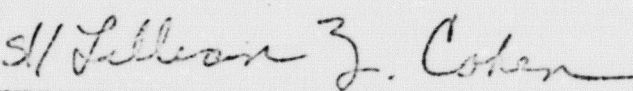
5. The real gravamen of the complaint is that the defendants have not offered the mother of the plaintiffs' housing sufficient for her extraordinary needs. But there is no evidence that any of the defendants have housing which could satisfy plaintiff. Nor is there any evidence that the mother of the plaintiffs has found any housing which would suit her needs and that any defendant has refused to pay for it. Certainly housing cannot be provided to the minor plaintiffs directly. At any rate, the State defendants have no duty or power to find housing for the plaintiffs and no such duty is alleged.



WHEREFORE, the motion to dismiss the complaint should  
in all respects be granted.

  
AMY JUVILEN

Sworn to before me this  
15th day of March, 1976

  
Assistant Attorney General  
of the State of New York



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK - - - - x

RANDALL BLACK, et al.,

Plaintiffs

v.

ABRAHAM BEANE, et al.

Defendants.

75 Civ. 5827 (M.P.)

NOTICE OF MOTION TO  
DISMISS COMPLAINT AND TO  
STAY DISCOVERY PENDING  
DECISION OF THE WITHIN  
MOTION

- - - - - x

PLEASE TAKE NOTICE that upon the affidavit of SAMUEL GRANVILLE, sworn to the day of February, 1976, the Memorandum of Points and Authorities, both of which are submitted herewith, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court, before the Honorable Milton Pollack, in Courtroom 905, on February 20, 1976 at 10:00 A.M., or as soon thereafter as counsel may be heard for an order pursuant to Rule 12 (b) (1), (6) and (7) of the Federal Rules of Civil Procedure, dismissing the complaint in this action as to defendants Joseph J. Christian and John J. Reichardt for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, or in the alternative, for failure to join an indispensable party, for the reasons more fully set forth in the said accompanying affidavit and Memorandum of Points and Authorities.

AND TAKE FURTHER NOTICE that defendants Christian and Reichardt will at the same time and place seek a stay of production of documents requested by plaintiffs in a Request to Produce served on December 29, 1975, (which production has heretofore been stayed by stipulation of the parties, so ordered by the Court) pursuant to Federal Rule (c), until the within motion to dismiss has been decided by the Court.



Dated: New York, New York

February , 1976

EDWARD W. NORTON  
General Counsel  
New York City Housing Authority  
Attorney for Defendants Christian  
and Reichardt  
JEANNE HOLLINGSWORTH, of Counsel  
250 Broadway  
New York, New York 10007  
433-4176

TO: MARCIA ROBINSON LOWRY, Esq.  
PETER BIENSTOCK, of Counsel  
Attorneys for Plaintiffs  
Children's Rights Project  
New York Civil Liberties Union  
84 Fifth Avenue  
New York, New York 10011  
924-7800

W. BERNARD RICHLAND, Esq.  
Corporation Counsel  
CARMELA ACKMAN  
Assistant Corporation Counsel  
Attorney for Defendants Beane,  
Dumpson, Parry, Beine and Dall  
Municipal Building  
New York, New York 10007  
566-4501

ALFRED SHRETTER, Esq.  
Davis, Polk & Wardwell  
Attorney for Defendant Fogarty  
on behalf of Mission of the  
Immaculate Virgin  
One Chase Manhattan Plaza  
New York, New York  
HA 2-3400



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
RANDALL BLACK, et al.,

Plaintiffs

75 Civ. 5827  
(N.P.)

v.

ABRAHAM BEAME, et al.

Defendants.

AFFIDAVIT IN SUPPORT OF  
DEFENDANTS' CHRISTIAN  
AND REICHARDT MOTION TO  
DISMISS COMPLAINT

----- x  
STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF NEW YORK)

SAMEUL GRANVILLE, being duly sworn, deposes and says:

1. I am Director of Management of the New York City Housing Authority (hereinafter referred to as the "Authority") and am responsible for the management of the 230 public housing projects owned and operated by the Authority. I am under the general direction of the Members of the Authority, of which defendant Joseph J. Christian is Chairman, and supervise the work of defendant John J. Reichardt, Manager of Douglass Houses, where some of named plaintiffs reside. I make this affidavit on personal knowledge and upon information and belief from information supplied to me by officials and personnel of the Authority and from records of the Authority.

2. The New York City Housing Authority is a public corporation of the State of New York which has as its primary purpose the provision of adequate, safe and sanitary housing for persons of low income. The Authority is empowered to enter into leases with tenants, to make rules and regulations and to do all things necessary and convenient to carry out its powers under the



Public Housing Law of the State of New York.

3. This affidavit is submitted in support of defendants' motion to dismiss the complaint herein pursuant to Federal Rule of Civil Procedure 12(b) (1) (6) and (7) for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, or in the alternative, for failure to join an indispensable party.

4. Plaintiffs Kim Black, Janice Black (aka Michele Black), Nathaniel Black, Ulysses Black and Geraldine Black reside with their mother Frances Black, not a named party herein, at 826 Columbus Avenue, Apt. 10H, a 6 room apartment located in Douglass Houses, a state-aided project owned and operated by the Authority. Frances Black has been a tenant of the Authority since August, 1967, following a sit-in at Manhattan Borough President Percy Sutton's office to dramatize her need for adequate housing. (See Exhibit 1, hereto annexed, containing an account from the Daily News of July 28, 1967). On August 1, 1967, Mrs. Black entered into a lease with the Authority for apartment 11A at 870 Columbus Avenue, a 5 1/2 room apartment located in Douglass Houses. (See Exhibit 2, hereto annexed). The composition of the family at that time consisted of ten persons, Mrs. Black and nine of her children.

5. Thereafter Mrs. Black gave birth to a daughter, La Frances, on August 25, 1967. In or about March 1968 Mrs. Black requested and obtained Authority permission to have her daughter Helen Hills, born February 16, 1951, reside with her. Because the family consisted at that point of 12 persons, the Authority transferred Mrs. Black and her family on or about July 9, 1968 to the 6 room apartment where she still resides (Copy of Mrs. Black's



current lease is hereto annexed as Exhibit 3). It had been ascertained before this transfer that a request by Mrs. Black in 1967 for a transfer to the Polo Grounds project could not be granted because all 6 and 7 room apartments there were being reserved for families displaced by model cities programs.

6. Authority records reveal that twice in 1968 Mrs. Black stated that she contemplated giving up her children for adoption. They also indicate that the Society for the Prevention of Cruelty to Children was called in by the school attendance officer on or about March 26, 1969 because the Black children were often truant and when they attended school were dirty and poorly clothed. The Authority was advised that a Miss McCue of the Society was working with the family.

7. In 1969 Frances Black again requested transfer based upon "case reasons", to the effect that she and her family were being harassed by fellow tenants at Douglass Houses. A copy of the transfer request is hereto annexed as Exhibit 4). The request was refused when a thorough investigation by the Authority resulted in a finding that the charges of harassment were without substantiation. Mrs. Black was so advised in a letter dated January 28, 1970 and her attorney was advised in a letter dated August 30, 1971. (Exhibits 5 and 6, hereto annexed).

8. During a visit by E. Hagins, Housing Assistant, to Mrs. Black in her apartment on October 22, 1970 Mrs. Black told the Housing Assistant that her caseworker had offered the services of a homemaker but she had refused. Mrs. Black attributed the deterioration of her housekeeping and the truancy of Lirila to the



alleged harassment the family receives. Mrs. Black told the Housing Assistant she feels Linda will have a better adjustment if she is placed in a home and she plans to place her in one. The Housing Assistant asked Linda her opinion of this, and Linda was against entering a home. The Housing Assistant advised Mrs. Black to try to find another solution for the family, one that is beneficial to all of the children. A copy of the Housing Assistant's entry concerning this conversation in the tenant's folder is hereto annexed as Exhibit 7).

9. It would appear that, contrary to allegations in the complaint, (Pars. 1, 2, 28-55) defendants Christian and Reichardt have not engaged in a "custom, pattern and practice" to deny services to plaintiffs and their mother (who is not a named party to this suit) whereby the family has been broken up and denied the right to live under one roof. On the contrary, Mrs. Black has been rented the largest size apartment available at Douglass Houses to house her and her large family, has been offered services to aid her in maintaining the apartment in good order which apparently she refused, and initiated herself the idea of placing some of her children out of the household.

10. Thereafter in January, 1971 Mrs. Black placed four children temporarily with the Queens Society for the Prevention of Cruelty to Children. She received assistance from Paul Pelletreau, a social worker from welfare stationed with a team at Douglass houses, in placing LaFrances, her cerebral palsied daughter, in the Willowbrook School and in getting four children already placed in different agencies to be placed in the same agency. (See report



by Paul Pelletreau, dated May 16, 1972, hereto annexed as Exhibit B). Mr. Pelletreau advised the project management at Douglass Houses on July 5, 1972 that Helen Mills had departed from Mrs. Black's household. Mrs. Black's daughter Geraldine, a plaintiff herein, was born on January, 1971. In addition, Mrs. Black now has three grandchildren residing with her: Kevin, age 2 years, Patricia, age one year and Frances C. Black, age six months.

10. I have been advised by defendant John Reichardt, Manager of Douglass Houses, that since he became Manager at that project during 1973, he has received no request from Frances Black for a transfer. At such time as the family composition of the Black family is clearly ascertained, the Authority would entertain a transfer request upon appropriate grounds. Such a request would have to come from Frances Black, who as the tenant of record is the only person herein concerned with whom the Authority has a contractual relationship. With certain narrow exceptions (including elderly and disabled single persons) the Authority rents only to families, and naturally enters into leases only with the adult head of household, parent or parents in the family.

11. Contrary to the allegations of the complaint, the Authority nor any person on its behalf has not engaged in any custom, pattern or practice to deprive plaintiffs of public housing. (Complaint, Pars. 34, 39, 41, 47, 54-58.) On the contrary, five plaintiffs now reside in public housing, and the four who formerly resided therein but are now in foster care were, by their own admission, so placed at the request of their mother. (See Complaint, Par. 42). Upon information and belief, Frances Black has



not requested the return of these four plaintiffs to her household. Until the composition of the Black family is clearly ascertained, the Authority is in no position to take any action concerning a possible future request by Mrs. Black for a transfer. (See Complaint, Wherefore Clause, Par. (e)). Therefore I am advised by counsel that the complaint presently states no definite claim by plaintiffs which is ripe for judicial resolution.

12. Since no request for a transfer by Mrs. Black is before the Authority, the composition of the Black household is not definitely known at this time, and Mrs. Black is not a party before the Court, there is no present grievance by any party as to housing accommodations under the control of the Authority before this Court. There has been no showing that at such time as the composition of the Black family which wishes to reside in public housing has been ascertained, the Authority will fail to provide such accommodations as shall be necessary and suitable to meet the housing needs of the family.

WHEREFORE, it is respectfully submitted that the defendants' motion to dismiss the complaint should be in all respects granted, in addition to such other relief as shall be just and proper.

131  
\_\_\_\_\_  
SAMUEL GREENVILLE

Sworn to before me this

11 day of February, 1976

JOSEPH GREENGLASS  
Notary Public, State of New York  
No. 2-565225  
Qualified in Kings County  
Commission Expires March 30, 1976



Exhibit 1

DAILY NEWS 1/28/67

## Threatens a Birth-In to Get Apt.

By ALFRED MIELE

A pregnant Harlem mother of nine camped in Borough President Percy Sutton's 20th-floor office yesterday and threatened to stage the city's first birth-in to dramatize her need for adequate public housing.

"I won't leave until I get a decent apartment," declared Mrs. Frances Black, 39, of 13 W. 103d St. With her were all her children and about two dozen neighbors calling themselves the Organization of Neighbors and Friends to Help Find an Apartment for Mrs. Black.

At 2 P.M., four and a half hours after the group arrived at the Municipal Building, Mrs. Black, who became ill in the excitement, was taken by ambulance to Beekman-Downtown Hospital for an examination.

### Offer "Worse" Quarters

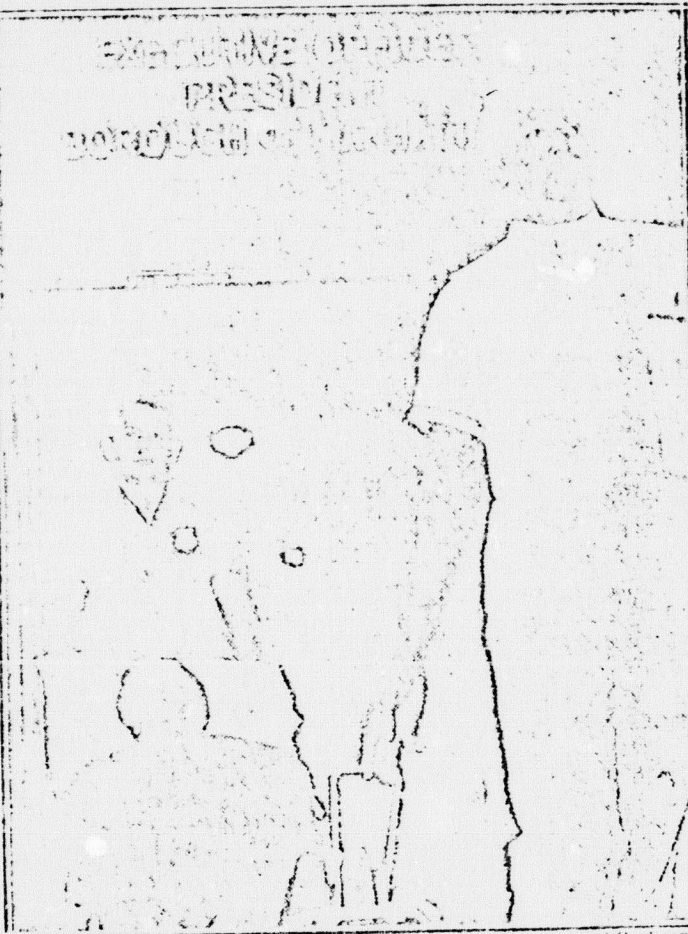
Mrs. Black, who is separated from her husband and is on relief, lives with her children in a four-room apartment. The \$125-a-month rent is paid by the Welfare Department. She said she needs at least six rooms, but that other apartments the Welfare Department sent her to were "worse than my present quarters."

Sutton was in Chicago yesterday attending a conference of Negro elected public officials. But his staff took Mrs. Black, her children and friends in, made her comfortable and sent out for sandwiches and beverages for the crowd.

### Sutton "in Sympathy"

A spokesman for Sutton said the borough president "is in great sympathy" with the demonstrators. "This case highlights a major problem in New York City," he said, "It is virtually impossible for a large, low-income family to obtain decent housing."

Late in the afternoon, Sutton's office announced it had found a 4½-room apartment for Mrs. Black and her family in the Frederick Douglass Houses on the upper West Side. A spokesman said Mrs. Black will move in "within a few days" and that there will be no further action.



Mrs. Frances Black is wheeled out of Municipal Building.

BEST COPY AVAILABLE



Exhibit 2

NYCHA 040.001 REV. 5/59

RESIDENT MONTHLY LEASE AGREEMENT

NEW YORK CITY HOUSING AUTHORITY

DOUGLASS

HOUSES

THE NEW YORK CITY HOUSING AUTHORITY (herein called the "Landlord") in consideration of the rental herein provided, and of the representations made by \_\_\_\_\_ Frances Black (herein called the "Tenant") as set forth in his signed application, his receipt herewith of the Tenant Rules and Regulations, and his undertaking to comply with all the regulations of the Landlord, hereby leases to the Tenant, and the Tenant hereby hires from the Landlord, Apartment No. 11 A in premises 870 Columbus Avenue, in the Borough of Manhattan, City of New York, for a term of one (1) month, beginning the first day of September, 19 67, and terminating at midnight on the 10 day of September, 19 67, at a rental of Eighty-one and 20/100 Dollars (\$ 81.20) per month, due the first day of September, 19 67, and payable such day of each month as the Landlord may decide. The above rental includes gas and electricity not in excess of a quantity which the Landlord in its discretion will fix, and may from time to time change.

This lease, unless terminated as hereinafter provided, shall automatically be renewed for successive terms of one (1) month each.

The Landlord or the Tenant may each terminate this lease and tenancy at the end of any monthly term by giving to the other one calendar month's prior notice in writing.

Any notice to the Tenant served pursuant to this agreement will be sufficient if delivered to the Tenant personally or sent by mail to his premises, or affixed to the door of his premises. Any notice to the Landlord served pursuant to this agreement will be sufficient if delivered to the Manager personally or sent by mail to the Management Office located in the development.

IN WITNESS WHEREOF, the undersigned have executed this agreement on the 1st day of August, 19 67.

Tenant

Frances Black  
Tenant

NEW YORK CITY HOUSING AUTHORITY

By [Signature]  
Manager

In the Presence of:

R. Johnson

A-59



Exhibit 3

NYCHA 040.001 (REV. 5/59) <b>RESIDENT MONTHLY LEASE AGREEMENT</b> 273	<b>NEW YORK CITY HOUSING AUTHORITY</b>	Douglass	HOUSES
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This lease, unless terminated as hereinafter provided, shall automatically be renewed for successive terms of one (1) month each.

The Landlord or the Tenant may each terminate this lease and tenancy at the end of any monthly term by giving to the other one calendar month's prior notice in writing.

Any notice to the Tenant served pursuant to this agreement will be sufficient if delivered to the Tenant personally or sent by mail to his premises, or affixed to the door of his premises. Any notice to the Landlord served pursuant to this agreement will be sufficient if delivered to the Manager personally or sent by mail to the Management Office located in the development.

IN WITNESS WHEREOF, the undersigned have executed this agreement on the 9th day of July, 19 68.

\_\_\_\_\_  
 Tenant  
*Frances Black*  
 Tenant

NEW YORK CITY HOUSING AUTHORITY  
 By *[Signature]*  
 Manager

In the Presence of:

*[Signature]*

A-60



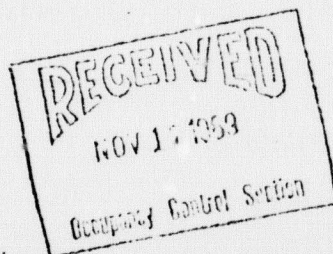
Exhibit 4

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YEAR	DATE	8/1/67	8/1/67	9/1/67	10/1/67	11/1/67	12/1/67	12/1/67	1/1/68	1/1/68	2/1/68	2/1/68	3/1/68	3/1/68	4/1/68	4/1/68	5/1/68	5/1/68	6/1/68	6/1/68	7/1/68	7/1/68	8/1/68	8/1/68	9/1/68	9/1/68	10/1/68	10/1/68	11/1/68	11/1/68	12/1/68	12/1/68	1/1/69	1/1/69	2/1/69	2/1/69	3/1/69	3/1/69	4/1/69	4/1/69	5/1/69	5/1/69	6/1/69	6/1/69	7/1/69	7/1/69	8/1/69	8/1/69	9/1/69	9/1/69	10/1/69	10/1/69	11/1/69	11/1/69	12/1/69	12/1/69	1/1/70	1/1/70	2/1/70	2/1/70	3/1/70	3/1/70	4/1/70	4/1/70	5/1/70	5/1/70	6/1/70	6/1/70	7/1/70	7/1/70	8/1/70	8/1/70	9/1/70	9/1/70	10/1/70	10/1/70	11/1/70	11/1/70	12/1/70	12/1/70	1/1/71	1/1/71	2/1/71	2/1/71	3/1/71	3/1/71	4/1/71	4/1/71	5/1/71	5/1/71	6/1/71	6/1/71	7/1/71	7/1/71	8/1/71	8/1/71	9/1/71	9/1/71	10/1/71	10/1/71	11/1/71	11/1/71	12/1/71	12/1/71	1/1/72	1/1/72	2/1/72	2/1/72	3/1/72	3/1/72	4/1/72	4/1/72	5/1/72	5/1/72	6/1/72	6/1/72	7/1/72	7/1/72	8/1/72	8/1/72	9/1/72	9/1/72	10/1/72	10/1/72	11/1/72	11/1/72	12/1/72	12/1/72	1/1/73	1/1/73	2/1/73	2/1/73	3/1/73	3/1/73	4/1/73	4/1/73	5/1/73	5/1/73	6/1/73	6/1/73	7/1/73	7/1/73	8/1/73	8/1/73	9/1/73	9/1/73	10/1/73	10/1/73	11/1/73	11/1/73	12/1/73	12/1/73	1/1/74	1/1/74	2/1/74	2/1/74	3/1/74	3/1/74	4/1/74	4/1/74	5/1/74	5/1/74	6/1/74	6/1/74	7/1/74	7/1/74	8/1/74	8/1/74	9/1/74	9/1/74	10/1/74	10/1/74	11/1/74	11/1/74	12/1/74	12/1/74	1/1/75	1/1/75	2/1/75	2/1/75	3/1/75	3/1/75	4/1/75	4/1/75	5/1/75	5/1/75	6/1/75	6/1/75	7/1/75	7/1/75	8/1/75	8/1/75	9/1/75	9/1/75	10/1/75	10/1/75	11/1/75	11/1/75	12/1/75	12/1/75	1/1/76	1/1/76	2/1/76	2/1/76	3/1/76	3/1/76	4/1/76	4/1/76	5/1/76	5/1/76	6/1/76	6/1/76	7/1/76	7/1/76	8/1/76	8/1/76	9/1/76	9/1/76	10/1/76	10/1/76	11/1/76	11/1/76	12/1/76	12/1/76	1/1/77	1/1/77	2/1/77	2/1/77	3/1/77	3/1/77	4/1/77	4/1/77	5/1/77	5/1/77	6/1/77	6/1/77	7/1/77	7/1/77	8/1/77	8/1/77	9/1/77	9/1/77	10/1/77	10/1/77	11/1/77	11/1/77	12/1/77	12/1/77	1/1/78	1/1/78	2/1/78	2/1/78	3/1/78	3/1/78	4/1/78	4/1/78	5/1/78	5/1/78	6/1/78	6/1/78	7/1/78	7/1/78	8/1/78	8/1/78	9/1/78	9/1/78	10/1/78	10/1/78	11/1/78	11/1/78	12/1/78	12/1/78	1/1/79	1/1/79	2/1/79	2/1/79	3/1/79	3/1/79	4/1/79	4/1/79	5/1/79	5/1/79	6/1/79	6/1/79	7/1/79	7/1/79	8/1/79	8/1/79	9/1/79	9/1/79	10/1/79	10/1/79	11/1/79	11/1/79	12/1/79	12/1/79	1/1/80	1/1/80	2/1/80	2/1/80	3/1/80	3/1/80	4/1/80	4/1/80	5/1/80	5/1/80	6/1/80	6/1/80	7/1/80	7/1/80	8/1/80	8/1/80	9/1/80	9/1/80	10/1/80	10/1/80	11/1/80	11/1/80	12/1/80	12/1/80	1/1/81	1/1/81	2/1/81	2/1/81	3/1/81	3/1/81	4/1/81	4/1/81	5/1/81	5/1/81	6/1/81	6/1/81	7/1/81	7/1/81	8/1/81	8/1/81	9/1/81	9/1/81	10/1/81	10/1/81	11/1/81	11/1/81	12/1/81	12/1/81	1/1/82	1/1/82	2/1/82	2/1/82	3/1/82	3/1/82	4/1/82	4/1/82	5/1/82	5/1/82	6/1/82	6/1/82	7/1/82	7/1/82	8/1/82	8/1/82	9/1/82	9/1/82	10/1/82	10/1/82	11/1/82	11/1/82	12/1/82	12/1/82	1/1/83	1/1/83	2/1/83	2/1/83	3/1/83	3/1/83	4/1/83	4/1/83	5/1/83	5/1/83	6/1/83	6/1/83	7/1/83	7/1/83	8/1/83	8/1/83	9/1/83	9/1/83	10/1/83	10/1/83	11/1/83	11/1/83	12/1/83	12/1/83	1/1/84	1/1/84	2/1/84	2/1/84	3/1/84	3/1/84	4/1/84	4/1/84	5/1/84	5/1/84	6/1/84	6/1/84	7/1/84	7/1/84	8/1/84	8/1/84	9/1/84	9/1/84	10/1/84	10/1/84	11/1/84	11/1/84	12/1/84	12/1/84	1/1/85	1/1/85	2/1/85	2/1/85	3/1/85	3/1/85	4/1/85	4/1/85	5/1/85	5/1/85	6/1/85	6/1/85	7/1/85	7/1/85	8/1/85	8/1/85	9/1/85	9/1/85	10/1/85	10/1/85	11/1/85	11/1/85	12/1/85	12/1/85	1/1/86	1/1/86	2/1/86	2/1/86	3/1/86	3/1/86	4/1/86	4/1/86	5/1/86	5/1/86	6/1/86	6/1/86	7/1/86	7/1/86	8/1/86	8/1/86	9/1/86	9/1/86	10/1/86	10/1/86	11/1/86	11/1/86	12/1/86	12/1/86	1/1/87	1/1/87	2/1/87	2/1/87	3/1/87	3/1/87	4/1/87	4/1/87	5/1/87	5/1/87	6/1/87	6/1/87	7/1/87	7/1/87	8/1/87	8/1/87	9/1/87	9/1/87	10/1/87	10/1/87	11/1/87	11/1/87	12/1/87	12/1/87	1/1/88	1/1/88	2/1/88	2/1/88	3/1/88	3/1/88	4/1/88	4/1/88	5/1/88	5/1/88	6/1/88	6/1/88	7/1/88	7/1/88	8/1/88	8/1/88	9/1/88	9/1/88	10/1/88	10/1/88	11/1/88	11/1/88	12/1/88	12/1/88	1/1/89	1/1/89	2/1/89	2/1/89	3/1/89	3/1/89	4/1/89	4/1/89	5/1/89	5/1/89	6/1/89	6/1/89	7/1/89	7/1/89	8/1/89	8/1/89	9/1/89	9/1/89	10/1/89	10/1/89	11/1/89	11/1/89	12/1/89	12/1/89	1/1/90	1/1/90	2/1/90	2/1/90	3/1/90	3/1/90	4/1/90	4/1/90	5/1/90	5/1/90	6/1/90	6/1/90	7/1/90	7/1/90	8/1/90	8/1/90	9/1/90	9/1/90	10/1/90	10/1/90	11/1/90	11/1/90	12/1/90	12/1/90	1/1/91	1/1/91	2/1/91	2/1/91	3/1/91	3/1/91	4/1/91	4/1/91	5/1/91	5/1/91	6/1/91	6/1/91	7/1/91	7/1/91	8/1/91	8/1/91	9/1/91	9/1/91	10/1/91	10/1/91	11/1/91	11/1/91	12/1/91	12/1/91	1/1/92	1/1/92	2/1/92	2/1/92	3/1/92	3/1/92	4/1/92	4/1/92	5/1/92	5/1/92	6/1/92	6/1/92	7/1/92	7/1/92	8/1/92	8/1/92	9/1/92	9/1/92	10/1/92	10/1/92	11/1/92	11/1/92	12/1/92	12/1/92	1/1/93	1/1/93	2/1/93	2/1/93	3/1/93	3/1/93	4/1/93	4/1/93	5/1/93	5/1/93	6/1/93	6/1/93	7/1/93	7/1/93	8/1/93	8/1/93	9/1/93	9/1/93	10/1/93	10/1/93	11/1/93	11/1/93	12/1/93	12/1/93	1/1/94	1/1/94	2/1/94	2/1/94	3/1/94	3/1/94	4/1/94	4/1/94	5/1/94	5/1/94	6/1/94	6/1/94	7/1/94	7/1/94	8/1/94	8/1/94	9/1/94	9/1/94	10/1/94	10/1/94	11/1/94	11/1/94	12/1/94	12/1/94	1/1/95	1/1/95	2/1/95	2/1/95	3/1/95	3/1/95	4/1/95	4/1/95	5/1/95	5/1/95	6/1/95	6/1/95	7/1/95	7/1/95	8/1/95	8/1/95	9/1/95	9/1/95	10/1/95	10/1/95	11/1/95	11/1/95	12/1/95	12/1/95	1/1/96	1/1/96	2/1/96	2/1/96	3/1/96	3/1/96	4/1/96	4/1/96	5/1/96	5/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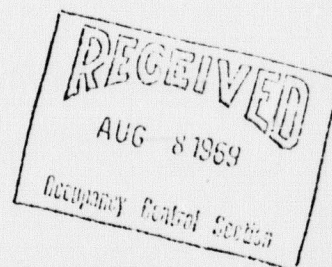


noise from apartment, especially at night - this has not been verified by a Housing Officer.

She now receives a restricted, 2-party rent check from Dept. of Welfare.



NOV 21 1969



A-62

Exhibit 5

you file  
7/7/76

January 23, 1970

Mrs. Frances Black  
826 Columbus Avenue, Apt. 10-21  
New York, N. Y. 10025

#00371

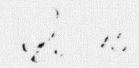
Dear Mrs. Black:

Your letter to Major Lindsay, regarding a transfer to another project, has been referred for my attention.

You will recall that when you telephoned this office, we had quite a detailed conversation concerning your request. The harassment which you had reported, and which was the basis on which your transfer was being considered, was thoroughly investigated and was found to be without substantiation.

If you have any further questions regarding your transfer or any other aspects of your tenancy, you may see a member of the Management Staff at Douglass Houses, who will be pleased to assist you.

Very truly yours,

  
A. H. Black,  
Chief Manager

AHE/r  
Management: Division A  
cc: Wise  
Central Files  
Douglass Houses  
Division Files

A-63



file 2-10ff Exhibit 6

August 30, 1971


Mr. Steven R. Rosenfeld  
Community for Children  
101 Central Park North  
New York, N. Y. 10026

Dear Mr. Rosenfeld:

This is in reply to your letter of August 27, 1971 regarding a request for transfer by Mrs. Frances Black of 826 Columbia Avenue, Apartment 10-N, Douglas Houses. Mrs. Black and her children were assigned a 5 room apartment at Douglas Houses on August 1, 1967, on an emergency basis. In July, 1969 she was transferred to a 6 room apartment at her request, where she presently resides. On July 15, 1971 Mrs. Black called this office insisting that she be transferred from Douglas Houses, alleging that she was being harassed and her children in fear. She said she called this office because she felt the project staff had not taken appropriate action in reference to her request for a transfer to another location.

In order to verify the situation, a thorough investigation and verification of the alleged harassment on which Mrs. Black's request for transfer was based. After investigation of her claim, we find that the facts do not warrant any further transfer.

Very truly yours,

  
Abe H. Perren  
Chief Manager

ATTN: Mr.  
Management District 3

cc: Community for Children  
New York City  
Housing Department  
Housing Administration  
District 3

RECEIVED  
22 AUG 31 1971  
Housing Department

## Exhibit 7

NEW YORK CITY HOUSING AUTHORITY

NYCHA 040 006 (REV. 10/59)  
INTERVIEW RECORD

NAME

Black, Frances

PROJECT

D

ACCOUNT NO.

2710H

DATE AND  
INTERVIEWER'S  
NAME

10/22/70

Entered  
Cont'd.

② said his care worker visited the Apt. looking and appeared to be the service of a home-maker. But ② refused. Said she didn't want a home-maker in the Apt. & pointed out to ② that she could use the service of a home-maker so please reconsider the offer.

② said she was able to keep the apartment clean prior to the harassment. Said the situation of Harassment has worsened and she is no longer able to clean properly. Also said the harassment has contributed to the fact that her daughter Linda stays away from home & is a truant.

She feels Linda will have a better adjustment if she is placed in a home and she plans to place her in one.

I asked Linda her opinion of going to live in a home. Linda was against entering a home. Said she prefers to remain with family. H.A. advised ② to try to find another solution for family. One that is beneficial to all of the children.

10/23/70  
E. Higgins

Received a phone call from Mr. Balin ②'s Social Worker who stated rent will be late because ② lost her check.

During the telephone conversation of stating check is dividend with Mr. Balin ②'s Complaint that she is being harassed.



5/16/72

NAME OF SUBJECT: Frances Black  
ADDRESS: 826 Columbus Ave. Apt 10 H

DATE OF REPORT OF REFUGEE: September 1971  
NAME OF REFUGEE: Mrs. Tracie

NAME OF REFUGEE: Paul Pelletier

Exhibit 3

A-66

When worked offensively with this multi-problem family to assist her in prevention of eviction, to assist her to regain an increasing emotional check by S.S. which prevented severe personal conduct, assisted client in placement of child-placed child, assisted client in getting apartment rented, assisted client in getting for children already placed in different agencies to be placed in the same agency, spoke with numerous agencies (B.C.W., St. Luke's community psychiatry, St. Luke's Center, Intention, Amherst W.C., Bureau of Unemployed Nurses, Mt. Sordito, Legal Aid etc) to get permanent responsibility & get action for this family. The present outlook for the family is very poor since there is very little strength on the Black, resources are few and problems are overwhelming.

Milton Pollack, District Judge.

This matter is before the Court on motions to dismiss the suit for lack of subject matter jurisdiction, lack of standing to sue, insufficiency of the claims and absence of an indispensable party (the plaintiffs' mother, Mrs. Black).

This is a civil rights action for declaratory and injunctive relief and damages pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202 seeking to protect and redress rights guaranteed by the First, Ninth and Fourteenth Amendments of the United States Constitution, Titles IV and XX of the Federal Social Security Act, 42 U.S.C. §§ 601 et seq., 1397 and New York State Law.

Jurisdiction of the action is posited under 28 U.S.C. §§ 1343(3) and (4) and § 1331 and under the doctrine of pendent jurisdiction.

The defendants, public officials and child care agency representatives, are charged herein with allegedly failing to provide the nine infant plaintiffs with public and private aid sufficient to keep their family intact; with allegedly failing to provide them with an apartment



sufficiently large to accommodate the whole family;  
and allegedly failing to supply their mother with sufficient  
counselling services.

Plaintiffs are nine infant children of Mrs.  
Frances Black; they range from four to fifteen years  
of age. The action is brought on behalf of the nine by  
"their attorneys and next friends," Marcia Robinson  
Lowry and Peter Bienstock <sup>1/</sup>.

#### The Complaint

The plaintiffs allege as their complaint, the  
following:

Mrs. Frances Black is 38 years old and receives  
Aid to Families with Dependent Children both for herself  
and to support her children (\$28). She has 15 children  
only nine of whom are accounted for in the complaint.  
Four of the nine reside at the Mission of the Immaculate

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<sup>1/</sup> Since filing and argument of these motions  
Mr. Bienstock has been relieved as counsel for  
plaintiffs.

Virgin in Staten Island, a large child care institution, and the remaining five reside with their mother. The four who reside at the Mission have not been provided with the services necessary to leave that institution and be reunited with their mother, sisters and brothers (§32). They were voluntarily placed in foster care by their mother in January 1971 (§42). Welfare benefits and services have been denied and delayed to the nine children and their mother and she has been humiliated and intimidated in attempts to secure adequate public assistance and housing for the nine (§33). The right of the nine to continuous care of their mother in a stable home environment has been placed in jeopardy or denied (§34). Mrs. Black and her children have for some time past had and still have inadequate housing for the family; presently that consists of a four bedroom apartment furnished by the New York City Housing Department in the public housing project at 870 Columbus Avenue, New York City (§35-40). The four at the Mission have asked, fruitlessly, to be reunited with the rest of their family (§45). The mother terminated



her gainful employment in March 1975 (151) at a visit to her home by a Social Services caseworker in October 1975 she was threatened with removal of the remaining five children and their placement in foster care (152), which placement the five at home do not want (152,53).

The complaint contends that the public officials and welfare and child care agencies owe the Blacks a statutory and constitutional responsibility to supply the children "with services which would enable them to remain together, if at all possible" (155).

#### The Prior Proceedings

Shortly after the filing of the complaint, plaintiffs sought a preliminary injunction to prevent the defendants from taking any steps to institutionalize the five plaintiffs who currently reside with their mother.

An injunction was denied, the opinion stating, in part:

[i]n the present case there has been neither a termination or reduction of benefits. Moreover, not only may it be serious[ly] questioned whether the complaint presents facts raising a substantial federal question, but it may be that neither welfare nor housing nor the alleged freedom from harassment and intimidation is a constitutional right; for that matter, continuous care by a mother is not necessarily an unqualified privilege.

The Motions -- Procedural Matters

The City Housing Authority, with other defendants joining it, question whether the issues presented are ripe for decision and whether the children have standing to raise them. They argue that Mrs. Black has not properly requested that the four children she delivered for foster care be returned home or properly requested that she be given a larger apartment or better services. They contend, for example, that she has not provided the Housing Authority with an accurate count of the number of members of her family. Furthermore, those defendants say that the Authority has a contractual relationship only with Mrs. Black and not with her litigating offspring or their next friends. Consequently, Mrs. Black is an indispensable party and without her as a party the suit must be dismissed, according to defendants.

It is settled law that unless a matter has reached the stage of actual controversy a federal court will not adjudicate a suggested constitutional question therein. United Public Workers v. Mitchell, 330 U.S. 75 (1947).



This ripeness doctrine not only imposes bounds on the Court's consideration of constitutional issues, but also provides the Courts with an upper limit on the exercise of their discretion in the consideration of applications for injunctive and declaratory relief; Abbott Laboratories v. Gardner, 387 U.S. 136 (1967). The purpose of requiring that disagreements ripen to controversy before being heard by the Courts is

to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. Abbott, supra at 148.

Therefore, though plaintiffs don't raise any exhaustion issue directly, there is in cases involving state agency action an element common to the doctrines of ripeness and exhaustion of state administrative remedies.

See Fuentes v. Roher, 519 F.2d 379, 386 (2d cir. 1975);

2/

Plano v. Baker, 504 F.2d 595 (2d Cir. 1974). Under that latter doctrine as it is applied in this Circuit, state administrative remedies must be exhausted before the bringing of a § 1983 action if those remedies are speedy, Blanton v. State University, 489 F.2d 377, 383 (2d Cir. 1973), adequate and not futile, Eisen v. Eastman, 421 F.2d 560 (2d Cir. 1969), cert. denied, 400 U.S. 841 (1970).

In general, a controversy over an agency's action or inaction is deemed ripe for adjudication if (1) it

2/ The Supreme Court in dicta has declared that

[w]hen federal claims are premised on 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3) -- as they are here -- we have not required exhaustion of state judicial or administrative remedies, recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights. Steffel v. Thompson, 415 U.S. 452, 472-3 (1974).

However, the Court of Appeals for this Circuit, "albeit with some hesitation [citation omitted] has continued to require exhaustion of administrative remedies." Fuentes, supra, at 386.



action or inaction of the agency has a "direct and immediate impact" on the plaintiffs. Abbott Laboratories, supra.

The same considerations are at least partially relevant to the issue of standing. As noted by the Supreme Court in Flast v. Cohen, 392 U.S. 83, 99 (1968), quoting, Baker v. Carr, 369 U.S. 186, 204 (1962):

The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.'

In testing the plaintiffs' standing to assert the claims raised, the Court must determine (1) whether plaintiffs allege that they have suffered an "injury in fact;" and (2) "whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."

Data Processing Service v. Camp, 397 U.S. 150, 152-3

(1970); see also Trafficante v. Metropolitan Life Ins. Co.,

409 U.S. 205 (1972); Evans v. Hills, \_\_\_ F.2d \_\_\_,

Dkt. No. 74-1793, (2d Cir. June 4, 1976). It must be

clear that there is a "logical nexus" between the plaintiffs' status and the substantive claims they raise; and, therefore, the Court is obliged to consider those substantive claims in testing plaintiffs' standing. Flast v. Cohen, supra at 101-102.

There is no doubt that the complaint seeks redress for an alleged injury in fact to plaintiffs' purported right to live together with their mother and siblings. The division of a family, whether caused voluntarily or involuntarily, may injure the children involved in ways too numerous and elusive to enumerate. Its impact is direct and immediate, though in many cases, it is an injury that may never be cured at all or may be cured only by non-judicial means. See Pena v. Kissinger, 409 F. Supp. 1182, 1184 (S.D.N.Y. 1976) for an allegation of an analogous injury to family life. Plaintiffs have clearly alleged an injury in fact sufficiently direct and immediate to satisfy both the ripeness and standing doctrines.

It is also clear that the interests plaintiffs seek to protect arguably fall within both the ambit of



that portion of the Constitution's penumbra which<sup>3/</sup> protects family life and the articulated goals, if not the binding provisions, of the Aid to Families with Dependent Children (AFDC) and state welfare statutes.<sup>4/</sup> The legal substance of plaintiffs' allegations is subject to serious question, but most of those allegations are presently fit for resolution and there is a logical nexus between them and plaintiffs' status of separation.

The Authority's assertion that Mrs. Black has failed to properly request a transfer to a larger apartment not only raises an issue of fact not soluable on the record before the Court, but is also defused by plaintiffs' claim that the defendants have discouraged

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3/ See Roe v. Wade, 410 U.S. 113 (1973); Stanley v. Illinois, 405 U.S. 645 (1972); In re Gault, 387 U.S. 1 (1967). These cases establish the constitutional interest plaintiffs seek to protect. The substantive issue presented to the Court is not whether the interest exists, but whether it requires the type of protection plaintiffs claim is constitutionally mandated.

4/ See 42 U.S.C. §§ 601, 603(f); 45 C.F.R. § 233.110(a)(2) (iii); New York Social Services Law §§ 407.1, 344.2; New York Public Housing Law § 2.

the exercise of their rights and generally harassed them. Again, there may be serious questions concerning the factual and legal merit of plaintiffs' claim, but that claim suffices to lay to rest at this stage of the litigation any exhaustion issue under the ripeness doctrine. Plaintiffs' general assertion that the Housing Authority resisted helping them or their mother in their alleged efforts to reunite their family makes it clear that whatever remedies were available to plaintiffs or their mother cannot, on this record and given the claims of the complaint, be termed speedy, adequate or useful.

Therefore, as to all of the plaintiffs' claims but one, there is standing and ripeness, though there may be no legal redress for the alleged claims.

The single claim in the complaint that is self-evidently not ripe for decision is the claim that certain defendants have "threatened" to begin legal actions to bring even more of Mrs. Black's children into foster care institutions. It cannot reasonably be gainsaid that a threat to institute legal proceedings in the Family Court to determine what shall constitute appropriate protection



of the best interests of the child in question, when properly pursued, does not violate a civil right or raise justiciable issues. This Court should not be expected to render an advisory opinion on the propriety of future foster care placements <sup>5/</sup>.

Given Mrs. Black's undeniable involvement in plaintiffs' claims, it is clear that she has "an interest relating to the subject of this action" under Rule 19(a), Fed. R. Civ. P. However, it is not at all clear on the current record that her absence would in any way impair or impede her ability to protect that interest, Rule 19(a)(i), or subject any parties to a substantial risk of incurring the sort of "double, multiple, or otherwise inconsistent obligations" against which Rule 19(a)(ii) was meant to

5/ It is noteworthy that while official threats were apparently considered sufficient to create a justiciable controversy in Dombrowski v. Pfister, 380 U.S. 479 (1965); the Court found that the effect of the alleged threats to institute criminal proceedings in that case was to chill the exercise of the complainants' First Amendment rights. No such chill of any constitutional right is even impliedly alleged to have occurred as a result of the threat in this case.

protect. In addition, it is the general rule that if the merits of an action may be determined without prejudice to the absent party, "it will be done; and a court of equity will strain hard to reach that result." Bordien v. Pacific Oil Co., 299 U.S. 65, 70 (1936); Mallis v. Federal Deposit Insurance Corp., 407 F. Supp. 7, 12 (S.D. N.Y. 1975); Charron v. Meaux, 60 F.R.D. 619, 622 (S.D. N.Y. 1973).

At any rate, there is no indication that Mrs. Black's joinder would not be possible and the Housing Authority's motion for dismissal on this ground is without merit.

#### The Legal Insufficiency

Though the claim that the federal questions herein are too insubstantial to support subject matter jurisdiction over the complaint is technically procedural in nature, both it and the defendants' Rule 12(b)(6) motion test the legal sufficiency of the complaint and, therefore, the two motions will be considered together. These motions go to the heart of plaintiffs' complaint and in



order to assess them it is necessary to make some order out of that rambling document.

Judging from the answering papers, plaintiffs are pressing five legal arguments; (1) that the defendants have interfered with their right to familial privacy under the First, Ninth and Fourteenth Amendments; (2) that defendants have failed to adopt a foster care system that is "least restrictive" of that and other of plaintiffs' constitutional rights; (3) that defendants have violated plaintiffs' right not to be subjected to cruel and unusual punishment; (4) that defendants have delayed and discouraged the exercise of plaintiffs' right not to be deprived of welfare and housing services without due process of law; and (5) that defendants have violated alleged federal and state statutory mandates that governmental benefits be distributed in such a way as to keep families together rather than drive them apart.

The basis of plaintiffs' complaint is their claim for what they call "preventive services;" i.e., their theory that the Fourteenth Amendment protection of fundamental rights requires the State to provide services

they allegedly require to keep their large family together. The Court's function on this set of motions is not to test the bonds between the members of the Black family, but to determine if anything in the Constitution requires the state to affirmatively maintain those bonds by providing the Black family with any benefits other than what they already receive.

As has recently been observed by Judge Weinfeld

Roe v. Wade [410 U.S. 113 (1973)] leaves no room to doubt that a 'fundamental' right to freedom of, and privacy in, family life exists, whether derived from the First, Ninth or Fourteenth Amendments, or some combination thereof. That children have the same right as adults to freedom of and privacy in, family life is abundantly clear from In re Gault, [387 U.S. 1 (1967)].... But accepting the importance and social desirability of a permanent and stable home and family life for a child does not mandate a federal constitutional right there-to in the child's favor. Child v. Heane, \_\_\_ F. Supp. \_\_\_, Dkt. No. 75-336, (S.D.N.Y. Feb. 20, 1976).  
[Footnotes omitted]

In Child the Court held that it is not proper to transmute the state's objective in providing adoption into a fundamental right to adoption, nor is it proper to reason that because a safe and decent home is an important component of family life the right to housing is a fundamental, constitutionally-protected right.



The plaintiffs in this case make no claim that their right to familial privacy has been interfered with directly, that they have been denied the statutorily-required dollar amount of welfare benefits, or that they have a direct right to housing or welfare benefits from the state. There is no claim that the four plaintiffs in foster care were pulled involuntarily from their home by the state or that they have any direct constitutional right to any payments or services denied them. Mrs. Black placed these children in foster care, and any direct claim to such benefits as a constitutional right would clearly be unavailing. Dandridge v. Williams, 397 U.S. 471 (1970); Lindsey v. Normet, 405 U.S. 56 (1972).

Rather than present such singular claims which, taken separately, would have no apparent basis in law or fact, plaintiffs present an amalgam thereof. It is argued that by refusing to give Mrs. Black and her children a larger apartment and counselling services which are allegedly necessary to the maintenance of their family and by presenting them with a system that allegedly provides more aid to foster care institutions than is

provided directly to families through the Aid to Families with Dependent Children program <sup>6/</sup>, the state has encouraged the foster care placement of four, and possibly more, of the Black children. That, plaintiffs contend, is not the alternative "least restrictive" of their rights to liberty in general and familial privacy in particular;

6/ Plaintiffs cite a study by the Fund for the City of New York entitled 'In the Child's Best Interest,' An Examination of New York City's Child Welfare System (November, 1971) for the proposition that "[t]hey [mothers on welfare] are penalized by a system which gives an agency \$330.00 per month to care for a child, but only about a quarter of that (from welfare) to mothers to perform the same function."

They also note that when he ordered city defendants and defendant Fogarty of the Mission to assist plaintiffs' family in finding a larger apartment at a foster care review hearing a few years ago, Family Court Judge William Rigler declared

It's costing \$140.00 a day to keep the kids [in foster care] for two days. She [Mrs. Black] could have a house for a whole month.... Let's not be penny wise and pound foolish when it's our pounds that are going down the drain.

It is plain that if the plaintiffs were merely claiming that defendants have failed to abide by Judge Rigler's order their prime avenue of legal recourse would be in the state courts. Instead, this Court must consider if this penny-wise, pound-foolish argument has a legitimate constitutional dimension. See Bandridge v. Williams, 397 U.S. 471, 487 (1970).



that, they contend, is an unconstitutional burden on the exercise of welfare and housing privileges provided by the state.

By this argument plaintiffs ask the Court to borrow a page from the law on the First Amendment right to freedom of speech. It has long been the law in that area that a legitimate governmental purpose (such as providing necessities for the poor) "cannot be pursued by means that broadly stifle fundamental personal liberties" when there are "less drastic means for achieving the same basic purpose." Shelton v. Tucker, 364 U.S. 479, 488 (1960). This "less drastic means" or "least restrictive alternative" principle has been extended by a number of courts into the due process arena in the area of involuntary commitment of the mentally ill and nearly all the cases plaintiffs cite involve the mentally ill or retarded. Covington v. Harris, 419 F.2d 617 (D.C. Cir. 1969); Wyatt v. Stickney, 344 F. Supp. 373, 384 (M.D. Ala. 1972), aff'd. sub. nom. Wyatt v. Aderholt, 503 F.2d 1302 (5th Cir. 1974); Kesselbrenner v. Anonymous, 33 N.Y. 2d 161, 350 N.Y.S. 2d 839 (1973).

The Supreme Court has specifically held that the Shelton v. Tucker "overreaching" principle has no place in an action challenging the State's administration of the AFDC program, Dandridge v. Williams, 397 U.S. 471, 484 (1969); and the proposed analogy to cases involving commitment and maintenance of the mentally ill was soundly and properly rejected in Child v. Beame, supra at p. 17:

The civilly committed have been deprived of their liberty by the state while the state's action in taking the child plaintiffs into foster care, whether with an institution or foster parent, is not a deprivation of liberty. The state has merely provided a home for them in substitution for the one the parents failed to provide.

There is no constitutional obligation on the state either to provide plaintiffs with welfare or housing benefits or to affirmatively insure a given type of family life, and none may be created by inference and misdirection through the penumbral constitutional right to familial privacy. Though this Court has the power to insure that no state agency improperly interfere in the Black's family life; see Stanley v. Illinois, 405 U.S. 645 (1971), it does not have the power to enforce the laudable sociological view of the importance of the family held by plaintiffs and their next friends. Plaintiffs would



have the word "interfere" mean too much. A proper reading of the Constitution cannot include such romantic leaps. However much this Court may share plaintiffs' beliefs concerning the present distribution of the state's largesse, it is not empowered to enforce those views without a constitutional basis. There is no such basis here. The Supreme Court has declared in no uncertain terms that

[t]he Constitution may impose certain procedural safeguards upon systems of welfare administration, Goldberg v. Kelly [397 U.S. 254 (1970)]. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. Dandridge v. Williams, supra at 487.

In citing certain cases in which the Supreme Court struck down unconstitutional burdens on the exercise of certain privileges; United States v. Chicago, Milwaukee, St. Paul & Pacific R.R. Co., 282 U.S. 311, 328-329 (1931); see Pickering v. Board of Education, 391 U.S. 563, 568 (1968), plaintiffs appear to be arguing that the present system unconstitutionally requires plaintiffs and their mother to curtail their right to an unimpeded family life in order to enjoy the optimum amount of welfare,

housing and foster care benefits offered by the state. This argument rests on their claim that under the present welfare system they all realize greater benefits if some of their number are in foster care than if they all lived with their mother and depended on AFDC aid alone. Though this argument has a certain superficial appeal, it must fail. It is nothing more than a logical variation on the "least restrictive alternative" theme already rejected by the Supreme Court in Dandridge v. Williams, supra, as noted above.

As yet another variation on their contention that their placement in foster care is "unsuitable", plaintiffs argue that that placement violates their right not to be subjected to cruel and unusual punishment under the Eighth Amendment. In light of their failure to allege any practice or condition "so bad as to be shocking to the conscience of reasonably civilized people," Child v. Beane, supra; Martarella v. Kelley, 349 F. Supp. 575, 597 (S.D.N.Y. 1972), this claim must be dismissed. The mere assertion that there are other more desirable means of supporting plaintiffs is hardly sufficient to support any action under the Eighth Amendment.



Plaintiffs' final constitutional claim is that defendants have engaged in a pattern and practice of denying and delaying welfare and housing services and have harassed, humiliated and intimidated Mrs. Black in her efforts to secure such services in such a way as to violate the Due Process Clause. The only apparent examples of such delays and discouragements are plaintiffs' contentions that defendants have dragged their feet in providing her with the counselling services and the size apartment Mrs. Black claims is necessary to keep her family together. It is apparently their claim that by such bureaucratic foot-dragging in their case defendants have done indirectly what they could not do directly; i.e., they have, in effect, terminated or reduced a benefit to which plaintiffs are statutorily entitled without the due process hearing required by Goldberg v. Kelly, 397 U.S. 254 (1970).

Two Courts in this Circuit have held, and this Court agrees, that in certain cases bureaucratic delay in processing and approving a benefit to which a person is statutorily entitled can amount to a deprivation

sufficient to bring the Due Process clause into play.

Perez v. Lavine, 378 F. Supp. 1390 (S.D.N.Y. 1974);

Nelson v. Sugarman, 351 F. Supp. 1132 (S.D.N.Y. 1972).

However, by failing to set out either in their answering papers or their complaint any statute or other state pronouncement entitling them to an apartment of a particular size or a given type of counseling service, the plaintiffs have also failed to make a case for any application of this due process concept to this case.

There is absolutely no indication of any mutually explicit understanding between plaintiffs, their mother and the state, Perry v. Sinderman, 408 U.S. 593 (1972), or, for that matter, anything but plaintiffs' and Mrs. Black's mere subjective expectancies, Roth v. Board of Education, 408 U.S. 564 (1972), to support their claim of a quasi-property interest in a larger apartment or counseling services.

As noted above, the state's refusal to affirmatively support the Blacks' family privacy (whether by outright denials of services or foot-dragging) is not a constitutional deprivation. It cannot be bootstrapped into such



a deprivation by the invocation of the Due Process Clause and those cases that properly apply that clause to protect families whose welfare benefits are being effectively terminated or reduced. Goldberg, supra; Perez, supra; Nelson, supra. Short of the claimed threat to place more of the children in foster care, plaintiffs have not provided this Court with a single factual allegation sufficient to support their broad claim of harassment, nor have they provided allegations of a direct interference with familial privacy or the denial of any statutory entitlement without due process of law.

On the other hand, the New York legislature and Courts have determined that the rejection of an applicant's initial request for public housing ought to and does give rise to minimal due process rights (i.e., a personal interview and a statement of the reasons for the rejection). N.Y. Public Housing Law § 156a (1976 Pocket Part); Sumpter v. White Plains Housing Authority, 29 N.Y.S.2d 420, 328 N.Y.S.2d 649, cert. denied, 406 U.S. 928 (1972); Velez v. Christian, 75 Misc.2d 159, 347 N.Y.S.2d 536

(Sup. Ct. Kings Co. 1973). In addition, 42 U.S.C. § 1437d(c)(3) (1976 Pocket Part) provides similar protection to tenants in federally-subsidized housing.<sup>7/</sup> See also Davis v. Toledo Housing Authority, 311 F. Supp. 795 (N.D. Ohio 1970) (in which case the Court held that a rejected applicant for public housing is entitled to a full post-rejection evidentiary hearing).

Whether or not such a personal interview or even a full evidentiary hearing is required in the case of a public housing resident's request for transfer to larger quarters would seem to be an open question. However, the plaintiffs' complaint and their answering papers on this motion do not

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<sup>7/</sup> The record does not indicate whether or not Mrs. Black's apartment is in a federally-subsidized building. For the purposes of managing such federally-subsidized buildings, the Housing and Urban Development agency has declared that

[i]f HUD or the PHA [public housing authority], as the case may be, determines that a Contract unit assisted under this Part is not Decent, Safe, and Sanitary by reason of overcrowding...housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, HUD (or the PHA) will assist the Family in finding a suitable dwelling and require the Family to move to such a unit as soon as possible. 24 C.F.R. § 1273.218(h).



clearly raise that question or even make reference to the above-cited authorities. It may be that by this action plaintiffs only seek to vindicate an alleged right not to be refused a larger apartment or counseling services without being given at least a personal interview and the reasons for the refusal. But their complaint and answering papers do not sufficiently specify such a right, nor do they point to a statute giving them an entitlement sufficient to support even such minimal due process.

The only statutes cited by plaintiffs are a number of federal AFDC and New York public welfare goal-setting provisions. 42 U.S.C. §§ 601, 608, 625, 1397; 45 C.F.R. § 223.110(a); New York Family Court Act § 255; New York Social Services Law §§ 407.1, 344.2; 18 New York Codes, Rules and Regulations § 450.3(g).<sup>8/</sup> These statutes, which plaintiffs claim have been directly violated by defendants, set the purposes and objectives of the various federal and state welfare schemes. While they all clearly establish a governmental policy of encouraging family life through various

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<sup>8/</sup> Plaintiffs cite these statutes as creating independent claims for relief. They do not, however, challenge the state plan submitted to and approved by the Secretary of HHS pursuant to the AFDC statute.

forms of benefits to needy families, none of them purport to create an individual right to have that policy perfectly achieved or even pursued in any particular manner. As noted by the Court in Albany Welfare Rights Organization Day Care Center v. Schrock, 463 F.2d 620, 624 (2d Cir. 1972), cert. denied, 410 U.S. 944 (1973),

Congress did not seek to impose a rigid administrative system on the states that elected to adopt [a plan to aid "needy families with children"]. Each state is free to choose the administrative system which is most appropriate to the state's needs. Local administration of a plan is explicitly sanctioned by the Act. See e.g. 42 U.S.C. §§ 602(a)(1), (3), (15)(F) (1970).

It is apparent, therefore, that plaintiffs do not enjoy an entitlement as a result of these goal-setting statutes. Thus, plaintiffs have failed entirely to set out any factual allegations indicating the denial of a statutory entitlement and the corresponding denial of due process. They have, in fact, failed to indicate whether or not they even seek procedural due process protection; and any claim for substantive due process would clearly be unavailing. Cf. supra.

The complaint on this score is so vague and conclusory that it must be dismissed as legally insufficient.



Albany Welfare Rights Organization, supra Lynde v.  
Han-joo, 150 F.2d 942 (2d Cir. 1971); Powell 72  
Workmen's Compensation Board of the State of New York,  
327 F.2d 131 (2d Cir. 1961).

The remainder of the complaint rests on the Court's power to assert "pendent" jurisdiction over the claims based on the above-described state and federal goal-setting statutes. See Almanares v. Wyman, 453 F.2d 1075, 1083 n. 10 (2d Cir. 1971), cert. denied, 405 U.S. 944 (1972). Though, as previously noted, there is a serious question as to whether or not these statutes may be used as the basis for an individual's claim of right or a private cause of action based on such a right, the Court need not reach that question in considering these purely statutory claims. Those constitutional claims that are adequately articulated in the complaint are so obviously without merit that they cannot form the basis for the exercise of this Court's present jurisdiction. Goosby v. Osser, 409 U.S. 512 (1973); Hagans v. Levine, 415 U.S. 528 (1974). Plaintiffs having asserted the

doctrine of pendent jurisdiction as the only basis for the Court's subject matter jurisdiction over these statutory claims, this portion of the complaint must be dismissed.

Accordingly, the complaint is dismissed in its entirety as to all defendants.

SO ORDERED.

*Milton Pollack*

August 30, 1976

Milton Pollack  
U.S. District Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
RALPHAL BLACK, GREEN BLACK, JOSEPH  
BLACK, CORINNE BLACK, LEO BLACK,  
JANICE BLACK, RUTHANN BLACK,  
JENNIFER BLACK and GONDALENE BLACK,  
by their attorneys and next friends,  
MARCIA ROBINSON LOWMY and PETER  
WISNIOCK

Plaintiffs

-against-

ALBERTA BEANS, individually and as  
mayor of the CITY OF NEW YORK, et al

Defendants  
----- X

75 CIVIL 5227 (LJ)

30/1/1976

Defendants having moved the Court for an order to dismiss the  
lack of subject matter jurisdiction, and the said motion being  
come on to be heard before the Honorable Milton Pollack, United  
States District Judge, and the Court thereon on August 11, 1976,  
having rendered down its opinion granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendants ALBERTA BEANS,  
individually and as mayor of the CITY OF NEW YORK, et al, have  
judgment against the plaintiffs RALPHAL BLACK, GREEN BLACK, JOSEPH  
BLACK, CORINNE BLACK, LEO BLACK, JANICE BLACK, RUTHANN BLACK,  
JENNIFER BLACK and GONDALENE BLACK, by their attorneys and next  
friends MARCIA ROBINSON LOWMY and PETER WISNIOCK dismissing the  
complaint in its entirety as to all defendants.

Dated: New York, N.Y.  
September 1, 1976

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RANDALL BLACK, et al., :  
 :  
 Plaintiffs, : 75 Civ. 5827 (MP)  
 :  
 -against- :  
 : NOTICE OF APPEAL  
 ABRAHAM BEAME, et al., :  
 :  
 Defendants. :  
-----X

PLEASE TAKE NOTICE that plaintiffs herein hereby appeal  
to the United States Court of Appeals for the Second Circuit from  
the final judgment dismissing their complaint in its entirety,  
entered in this action on September 1, 1976.

Dated: New York, New York  
September 24, 1976

Steven R. Shapiro,  
Of Counsel

*Marcia Robinson Lowry*  
\_\_\_\_\_  
Marcia Robinson Lowry  
Children's Rights Project  
New York Civil Liberties Union  
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New York, New York 10011  
(212) 924-7800

Attorney for Plaintiffs